

**CONSTITUTION OF KENYA REVIEW COMMISSION**

**(CKRC)**

**Verbatim Report Of**

**DISSEMINATION OF REPORT AND DRAFT BILL**

**ELDAMA RAVINE CONSTITUENCY AT ELDAMA RAVINE TOWN  
HALL**

**ON**

**17<sup>TH</sup> OCTOBER 2002.**

*Transcribed by Chepkemai Catherine.*

**CONSTITUTION OF KENYA REVIEW**

**DISSEMINATION OF REPORT AND DRAFT BILL, RIFT VALLEY PROVINCE, ELDAMA RAVINE  
CONSTITUENCY AT ELDAMA RAVINE TOWN HALL ON 17<sup>th</sup> OCTOBER 2002**

**Present:**

Wycliffe Owade - P.O acting on behalf of Commissioner Dr. Andronico Adede.

**Secretariat Staff in attendance:**

1. Esther Mugo            Assistant Programme Officer
2. Alice Thuo            Verbatim Recorder
3. Paul Tuikong          District Coordinator

The meeting started at 11:45 a.m.

**Paul Tuikong:** Basi ninafikiri kwa wakati huu tungeanza mkutano wetu, ninaona saa imeenda. Tutaita mtu mmoja atuongoze kwa maombi ili tupate kuendelea. Sally, tafadhali uje utuombe.

**Sally: (Prayer)** Tuombe. *Mungu Baba Katika jina la Yesu Kristo, tunashukuru asubuhi ya leo, asante Mungu wetu kwa sababu umetuongoza na umetulinda. Asante kwa sababu umetutoa kwa manyumba zetu mpaka tumefika mahali hapa tukiwa wazima. Kwa hivyo tunakushukuru na tunasema ni asante Mungu wetu. Asante hata kwa ajili ya Asubuhi ya leo, ya kwamba Mungu tumekusanyika mahali hapa kwa lengo moja ya kwamba tunaenda kuketi na*

*kujadiliana kuhusu Katiba ya nchi yetu. Kwa hivyo Mungu wetu tunaomba ya kwamba Roho Mtakatifu apate kutuongoza. Tunapojadiliana Baba tunaomba utupe hekima na maarifa katika maisha yetu, ya kwamba tunaenda kusema mambo ambayo yatatuelekeza karibu na wewe Mungu wetu na hata yale yote ambayo tutaenda kuongea juu yake, utupe hekima na maarifa katika maisha yetu ya kwamba tunaenda kusema mambo ambayo yatatuelekeza karibu na wewe Mungu wetu. Hata yale yote ambayo tutaenda kuongea juu yake, Baba tunaomba ya kwamba wewe ndiwe utakae tuongoza na hata kutupa ufahamu na mwelekeo katika nchi yetu. Asante Mungu wetu kwa sababu ya kila mmoja ambaye ameketi mahali hapa siku ya leo. Tunajua kwamba kila mtu ako na jambo la kusema na kwa hivyo tunaomba ya kwamba upate kutupa hekima na maarifa katika mambo haya yote ili tunaposema, tuiseme mambo ambayo Bwana yatatuelekeza mahali ambapo hapatakuwa pa mafanikio katika nchi yetu. Asante kwa sababu Mfalme wetu unajali na hata unatupenda. Ninaomba yote nikiamini katika jina la Yesu aliye Mungu wetu na aliye mwombezi wetu.*

**Audience:** Amen.

**Paul Tuikong:** Wageni wetu kutoka Nairobi, CKRC, wakiongozwa na Bwana Wycliffe Owade ambaye ni Programme Officer katika ofisi kuu kule Nairobi pamoja na wale ambao wameandama pamoja, Committee members wangu, ambao wako hapa, delegates ambao watawakilisha Koibatek kule Nairobi during the National Constitutional Conference, Civic education providers ambao wako hapa, viongozi wa serikali, Councillors, viongozi wa tabaka mbali mbali, wananchi wote wa eneo la Uwakilishi Bungeni la Eldama Ravine, Hamjambo?

**Audience:** (Response by clapping)

**Paul Tuikong:** Ninataka kuchukua nafasi hii kuwakaribisha nyinyi hapa siku ya leo, ninajua ni siku ambayo tumekuwa tuingoja sana, ni siku ya muhimu sana katika area hii yetu ya Koibatek na ninataka kuwashukuru kabisa kwa sababu mmekuja mapema ili muje tujadiliane kuhusu Katiba mpya. Na kabla ya hiyo, nitachukua nafasi ya dakika mbili, tatu, kuwajulisha wale ambao tumekuwa tukifanya kazi pamoja tangu tulipoanza kazi ya Katiba katika nchi hii yetu.

Kwanza niko na Committee members, wale wako hapa wasimame niwajulishe kwa officers wetu kutoka Nairobi na wakaaji wa eneo hili la Uwakilishi Bungeni la Eldama Ravine. Tafadhali msimame, committee members wale wako hapa, very good. Councillor David Morogo is the Chairman of the 3Cs Eldama Ravine Constituency, thank you very much. Mama Lydia Bett, yeye ni committee member akiwakilisha eneo hili la Eldama Ravine, Bwana George Githua, pia ni committee member wangu, ambaye tulikuwa tukifanya kazi pamoja. Tuko na wale ambao wamekuwa walimu wa Katiba na wako wengi hapa na ningeliza msimame pahali popote mnapokaa, ndiyo watu wajue mmekuwa mkifanya kazi mzuri. Bwana Timothy Sanga, asante sana, kutoka Boror Youth, Bwana Kiprop, Sanga anafanya na huyo, ni group moja na huyu John Kipkesbai, asante. Huyu ni Bwana Kiprop, group yake imekuwa ile wanajiita Kiplombe village. Nimekuwa na wengine pia kutoka Mogotio, Bwana Kiptum

amekuwa akifanya, weka mkono wako Kiptum, civic education across the district; both Mogotio and Eldama Ravine.

Ninafikiri kwa wakati huu, vile nyinyi mnajua juzi tulifanya kazi ingine na mlikuwa mkisoma kwa magazeti ya kwamba watu watatu walikuwa wanatakikana kuwakilisha Koibatek District kule Nairobi during the NCC na tulifanya kazi hiyo ya uchaguzi na tayari tuko na wale ambao watatuakilisha kule Nairobi. Ningeomba wasimame halafu niwa-introduce. Bwana David Kimaiwa Kigen, Councillor kutoka upande wa Koitebes, delegate wa kwenda Nairobi. Huyu ambaye mnamuona anaitwa Pastor Resally Chepkoech, yeye ni delegate na anatoka upande wa Mumberes na anaelekea Nairobi for the NCC. Kuna mwingine ambaye ataungana na sisi, huyo ni Bwana Kiptingos, pia ni mmoja wa wale watatu ambao wataenda Nairobi. Hawa wote ni watu ...wale wako hapa mbele yako Bwana Owade, ni watu ambao tumekuwa tukifanya kazi pamoja tangu wakati ule.

Tunajua ya kwamba barabara imekuwa mdefu; tulianza na establishing the office, tukaanza na constituency forums, tulifanya forums mingi sana across the district, tulienda mpaka almost village to village level na basi ukiwaona hawa ni stakeholders ambao tumekuwa all through civic education. Kuna hata wale - simama Mr. Mwaura - Mr. Mwaura pia ni civic education supervisor lakini not from CKRC but from ICEP, they have been doing a good job also. So ni hawa tumekuwa tukisaidiana on civic education, tukakuja public hearings, hawa ndio watu ambao tulikuwa na hao hapa na ninakumbuka kabisa ilikuwa tarehe tano mwezi wa saba, tulikuwa hapa tukipeana maoni juu ya Katiba Mpya.

Maoni yenu, yale mlipiana tarehe tano mwezi wa saba, Tume ya Kurekebisha Katiba ya Kenya walienda waka-record maneno yenu yote, tuko na report ya Eldama Ravine Constituency. Yale ambayo mlisema hapa, tarehe tano, yako hapa yote na ofisi yangu tume photocopy moja ya hii tukaweka kwa ---(Inaudible) na ingine tukaweka Koilegen. So kuna copy moja Koilegen na kuna copy moja kwa ---(Inaudible) Ukitaka Report ya Eldama Ravine, unaweza kwenda ku-photocopy kule, uone vile watu wa Eldama Ravine walisema. Iko profile hapa ya district, mtajisomea, population na hayo yote, hata vile uchaguzi ulivyoendelea 1997, iko hapa, nani alipata nini, iko hapa yote, hata vile tulipeana maoni yetu. Wale watu ambao walipeana maoni hapa walikuwa watu mia moja, wanaume wakiwa themanini na nane halafu wamama tisa halafu wengine watatu hawakuweka ni nani halafu kuna individual institution na hayo yote. This report is very good for you, ukiwa na nafasi unaweza kwenda Koilegen ama kwa ---(Inaudible) ukipatie copy moja .

Basi tumefika kiwango kingine kwa sababu tulipokuwa hapa wakati mwingine, mwezi wa saba, tuliwaambia ya kwamba Commissioners wanakuja kuchukua maoni yetu halafu waende waandike Draft report. So the draft report tayari imetokea, mko nayo hapo, everybody who is here ningeomba uwe na copy yako, hiyo itakuwa yako mwenyewe, na utaenda nayo, baada ya hapa utaenda nayo, huwezi kurudisha, hiyo ni yako.

Mwezi wa nane Commissioner walikuwa Mombasa wakiandika hiyo na tayari imetoka. This is not the final draft, si ya kwamba hii imekuwa Katiba, hapana. Bado iko katika Draft, kurekebisha bado iko nafasi, tunarekebisha kuanzia sasa,

itarekebishwa kwa NCC so tusije tukasema ya kwamba... notion ambayo imekuwa na watu wengine ni kwamba Katiba tayari imeandikwa. Haijaandikwa kwa sababu tuko hapa leo kwa minajili ya kuangalia na kuona ni sehemu gani imekuwa sawa, ninyi ndio mtasema na wale ambao wako hapa wataendelea nayo kule Nairobi, kuchukua na kupeana.

Ili nisimamishe mgeni wetu siku ya leo, ningetaka ku-introduce yeye namna hii, ya kwamba kazi hii ambayo tunafanya siku ya leo ni kazi ambayo inaendelea kote nchini Kenya. Ilianza wiki iliyopita, Jumatatu, ilianza last week on Monday na every constituency inatembelewa. Jana tulikuwa Mogotio, tumemaliza na Mogotio na leo ni Eldama Ravine. Kote nchini Kenya, hata Baringo, jana nilisikia coordinator wa Baringo alikuwa Kabartonjo na leo ninafikiri wako Baringo East. So, hii kazi inaendelea kote nchini Kenya, si ya kwamba ni hapa Koibatek peke yake. Infact, tunapooonga, we are about the last, tunamaliza. By Friday hii kazi itakuwa imemalizika kwa sababu according to our programme, wiki ijayo itakuwa preparations ya the National Constitution Conference ambayo tunatarajia ya kwamba 28<sup>th</sup> ndiyo itakuwa siku ambayo the first, from 28<sup>th</sup> na inaendelea mbele pengine one month, ndiyo conference itaanza.

So, tukiwa hapa leo, ni kazi ambayo inafanyika kote nchini Kenya, mjue hiyo. Constituencies ni mingi so Commissioners wengine wameenda Constituencies zingine, programme officers ni deputies wa Commissioners so pia wako na information ya kutosha ile mngelitaji ichukuliwe watafanya hivyo. Tungekuwa na Commissioner Andronico Adede, the new Commissioner, angekuja hapa leo lakini nilipopiga simu nikaambiwa ya kwamba alikuwa anatakikana aende Geneva, nafikiri he is even in Geneva by now, Geneva I don't know ni Switzerland au wapi, but as we are talking now he is in Switzerland, so wakatuma Mr. Wycliffe Owade ambaye ni Programme officer wetu katika Nairobi aje amwakilisha and I am very sure he is very able. Tulikuwa naye jana, he is very able na hata nyinyi baada ya hii kazi mtasema he has done a good job.

I don't want to take a long time, wale wako pale, watasema majina yao halafu tumpatie Mr. Owade aendele. Just say your name.

**Esther Mugo:** I am Esther Mugo

**Paul Tuikong:** What you are doing?

**Esther Mugo:** ----(not clear) kazi yangu ni ku-record everything that is happening here. I am the Assistant Programme Officer.

**Alice Thuo:** Kwa majina ni Alice Thuo. Kazi yangu ni ku-record yale maneno mnasema kwa tape recorder.

**Paul Tuikong:** Munaona hii kitu hii, inazunguka so this thing inazunguka namna hii, it will be replayed, kusikiza watu wa Eldama Ravine walisema nini. So this one will be replayed in Nairobi so chochote ambacho tutasema, mjue ya kwamba

imekuwa recorded, it has been recorded.

May I welcome Mr. Owade to introduce himself also na aendelee from hapo.

**Wycliffe Owade:** Hamjambo wananchi wa Eldama Ravine?

**Audience:** *(Response through hand clapping)*

**Mr. Owade:** Kwa jina kama mlivyosikia ninaitwa Wycliffe Owade. Ningeanza kwa kusema ninaomba mnipee ruhusa niketi chini ili ndiyo tujadiliane vizuri, hata ingawa mimi bado kijana lakini saa zingine hii kitu si rahisi. Nimepatiwa ruhusa?

**Audience:** Ndiyo.

**Mr. Owade:** Asante sana. Sasa nataka tuangalie hiyo pull out yetu, nitasema kwa Kiswahili na Kizungu pia ili twende haraka haraka. Hiyo ni sawa? Sasa ukiangalia hiyo, mwanzo mwanzo hapo, tuko na yaliyomo, that is utangulizi na inaenda mpaka chapter 20. Kwa hivyo ningeomba tutulie kabisa na tusikie kwa makini na ukiwa na maoni, hii ni mswada tu vile coordinator amesema. Sasa sisi kazi yetu hapa ni kusoma halafu nyinyi mnasikia na mkiwa na maoni tofauti mtapatiwa hiyo time ambayo mtasema hii tunaona ingekuwa hivi ama hii tumekataa kabisa. Mko na ule uhuru na demokrasia ya kusema kwa sababu hii ni mswada, si ile Katiba. Tuko pamoja?

**Response:** Ndiyo.

**Mr. Owade:** Basi tuanze hapo page two, page two imeandikwa hapo table of contents, hapo chini tuko na Preamble, yaani utangulizi maana yake hii ndilo jiwe la msingi wa Katiba wa Kenya. Ndiyo Wakenya wengine walitoa maoni kwamba lazima tuwe na utangulizi kwa Katiba yetu na nitasoma kwa Kiswahili. Na inasema hivi;

“Sisi wananchi wa Kenya tukifahamu wingi wa tofauti zetu za kikabila, kitamaduni na kidini, na tukidhamiria kuisha kwa amani kama taifa moja huru lisilogawika, pili, tukijitolea kulenda na kulinda maslahi ya kila moja, familia na jamii katika taifa letu, tukitambua matumaini ya wanawake na wanaume wetu ya kuwa na serikali ambayo imejengwa katika msingi muhimu inayodhamini uhuru, demokrasia, haki ya kijamii na utawala wa kisheria tukitekeleza haki yetu isiyotengeka ya uhuru ili kuamua aina ya utawala wa nchi yetu na ikiwa tumeshiriki kikamilifu katika utaratibu wa kuandaa Katiba. Tunaikubali, tunaifanya sheria na tunaitoa kwetu wenyewe na kwa vizazi vyetu vijavyo Katiba hii. Mungu ibariki Kenya”

Sasa hiyo ndiyo utangulizi, yaani jiwe la msingi la hii Katiba yetu. Tuko pamoja?

**Audience:** Ndiyo.

**Mr. Owade:** Halafu, I want us now to go to page 4, tuko na chapter 1, sovereignty of the people and supremacy of the Constitution yaani kwa Kiswahili, uhuru wa wananchi na ukuu wa Katiba. Inasema hivi, nitasoma kwa Kiswahili; Uhuru wa wananchi, Katiba mpya inasema hivi: Article 1:1. “Mamlaka yote ya uhuru ni ya wananchi wa Kenya na yanaweza kutekelezwa tu kulingana na Katiba” 2. “Wananchi watatekeleza uwezo wao wa uhuru kwa njia ya moja kwa moja au kupitia kwa wawakilishi wao watakao teuliwa kidemokrasia” 3. “Mamlaka ya uhuru ya wananchi yamegawanywa kwa njia tofauti miongoni mwao

- (a) Bunge, ambamo wananchi wameweka amana ya mamlaka ya kisheria ya jamhuri ili yatekelezwe kwa mujibu wa sura ya saba.
- (b) Mamlaka ya nchi ambamo wananchi wameweka amana ya mamlaka ya jamhuri ili yatekelezwe kwa mujibu wa sura ya nane.
- (c) Mahakama na mahakama nyingine huria zizizopendelea ambazo kwazo wananchi wametoa amana ya mamlaka ya kimahakama ili yatekelezwe kwa mujibu wa sura ya tisa.
- (d) Tume za kiKatiba na ofisi ambazo zimeundwa na sura ya kumi na saba na kwingine katika Katiba ambazo kwazo wananchi wametoa amana ya kulinda na kujenga jamhuri ya kiKatiba ambayo inaweza kupatikana kutokana na utekelezaji wa vyombo vyenye majukumu na uwezo vilivyowekwa na Katiba.

Sasa hiyo ndiyo maana ya uhuru wa wananchi. Nyinyi wananchi ndio mmepatia hiyo Katiba mamlaka. Hiyo ni kweli ama uwongo?

**Audience:** Ni kweli.

**Mr. Owade:** Mamlaka yote ya uhuru wa nchi hii inatoka kwa wananchi wa Kenya na sasa hiyo sura ya kwanza ama chapter one inaongea juu ya uhuru wa wananchi na ukuu wa Katiba. Tuko pamoja?

**Audience:** Ndiyo.

**Mr. Owade:** Ya pili ama chapter two, Jamhuri; tunataka kujua Katiba Mpya inasema nini kuhusu the republic. Republic maana yake ni nini? Hebu tuangalie hapo na tusome article 6:1 Jamhuri ni nini? “Kenya ni jamhuri iliyo huru.

2. Jamhuri ya Kenya imejengwa katika msingi wa kijamhuri wa utawala mwema kupitia demokrasia ya vyama vingi, utawala shirikishi, uwazi na uwajibikaji, utekelezaji wa madaraka, heshima kwa haki za binadamu, uhuru wa kimsingi na utawala wa sheria.” Hiyo ndiyo maana ya republic, yaani jamhuri. Tuko pamoja?

**Audience:** Ndiyo.

**Mr. Owade:** Ndiyo. Halafu twende kwa article 9:1, eneo na makao makuu, hiyo mnaweza kusoma. Twende kwa article 9:1; Languages yaani lugha. Katiba mpya inasema nini kuhusu lugha? Article 9:1, hiyo ni page 4; “Lugha rasmi za Kenya ni Kiswahili na Kiingereza na nyaraka zote rasmi zitatolewa katika lugha hizi mbili. 2. Lugha ya taifa ya Kenya ni Kiswahili 3. Serikali itaheshimu na kulinda wingi na tofauti za lugha za wananchi wa Kenya na itakuza maendeleo na matumizi ya Kiswahili, lugha za asili, lugha ishara na Braille. Tuko pamoja?

**Audience:** Ndiyo.

**Mr. Owade:** Haya! Twende kwa taifa na dini, article 10:1, that is the same page 4; “taifa na dini vitatenganishwa. 2. hapatakuwa na dini ya taifa 3. serikali itazichukulia dini zote kwa usawa.

Alama za taifa, article 11: ‘ alama za taifa za jamhuri ya Kenya ikiwemo; 1. Pendera ya taifa. 2. wimbo wa taifa. 3. Nembo na 4. muhuri wa taifa la Kenya, ni kama ambavyo zimeelezwa katika nyongeza ya tatu.

Twende kwa siku za taifa: Article 13:1; kwa Katiba hii mpya, tumependekeza hizo ziwe siku za taifa, hata ingawa tutawa na zile siku tunaita public holidays, hapa tuko na zile tunaita National Holidays na zitakuwa zifuatazo. “Siku zifuatazo zitazingatiwa kama siku kuu za taifa;

- (a) Juni 1; siku kuu ya Madaraka
- (b) Disemba 12; siku kuu ya Jamhuri
- (c) Siku ya Katiba kufanywa kuwa sheria; siku kuu ya Katiba

Hizo zitakuwa national holidays lakini pia tutakuwa na public holidays ambazo hatujaweka hapa.

Baada ya hiyo twende kwa chapter 3, national goals, values and principles: Malengo ya taifa, maadili na kanuni; kila taifa lazima liwe na malengo yake na inasema huvi, article 14:1 “malengo ya taifa, maadili na kanuni zilizomo katika sura hii zinahusu mamlaka ya Nchi, Bunge, Mahakama, Tawala za Wilayani na vyombo vingine vya serikali na viongozi, raia na miungano ya kibinafsi, pale ambapo chombo ni mojawapo ya hizo ambazo zimeandikwa hapo” Mnaweza kusoma.

Sasa hizo ndizo malengo yetu kama taifa moja. Lazima tuwe na malengo, lazima tuwe na maadili na kanuni kuongoza Nchi hii tukufu yetu ya Kenya. Halafu tusome hiyo Chapter 4; Citizenship ili tujue sheria inasema nini kuhusu uraia. Ukiwa na maoni unaweza tu kuandika ama kuweka, saa ile tutawapa nafasi, mtatoa. Tuko pamoja?

**Audience:** Ndiyo.

**Mr. Owade:** Chapter 4 on citizenship, uraia; kanuni za kijumla kuhusu uraia, article 16:1 “isipokuwa pale Katiba imeweka masharti tofauti, raia wote wa Kenya

- (a) wana haki sawa ya kupata haki, fadhila na faida za uraia.
- (b) wana kiwango sawa cha wajibu na majukumu ya uraia
- (c) wana haki sawa ya kupata paspoti ya Kenya na kupata hati yoyote ile ya kitambulisho inayotolewa na serikali kwa uraia.

Tuone sasa hizo categories za kupata uraia, that is article 18: Acquisition of citizenship, tuone inasema nini. Kupata uraia; “uraia unaweza kupatikana kwa njia ya

- (a) kuzaliwa
- (b) kusajilishwa
- (c) kuandikishwa

Halafu tuone inasema nini. Uraia kwa kuzaliwa; article 19:1 “kila mtu aliyezaliwa baada ya utekelezaji wa Katiba atakuwa raia wa Kenya ikiwa wakati wa tarehe ya kuzaliwa mtu huyo, mama ama baba yake ni raia wa Kenya. Tuko pamoja?

**Audience:** Ndiyo.

**Mr. Owade:** Number 2. “mtu aliye raia wa Kenya kuambatana na ibara hii hawezi kupokonywa uraia wake.

Uraia na ndoa: Tuone Katiba mpya inasema nini. Article 20:1; “mtu aliyefunga ndoa na raia wa Kenya kwa kipindi kisicho pungua miaka mitatu ana haki ya kusajilishwa kama raia wa Kenya akituma ombi.

(b) uraia haupotei kwa njia ya ndoa ama wakati wa talaka. Tuko Pamoja?

Uraia kwa kuandikishwa: Article 21 inasema hivi; “mtu aliyekuwa mkaazi wa Kenya kisheria kwa mfululizo na kipindi kisichopungua miaka saba na ambaye anatosheleza masharti yaliyotolewa na sheria ya Bunge, anaweza kutuma ombi la kuwa raia wa Kenya kwa kuandikishwa.

Halafu tuangalie hii Katiba mpya inasema nini kuhusu watoto wanaopatikana Kenya na watoto wa kupanga; article 22:1 “mtoto anayepatikana Kenya, ambaye yuko chini ya umri wa miaka minane ambaye wazazi wake hawajulikani atachukuliwa kuwa raia wa Kenya

(b) Mtoto aliye na chini ya miaka kumi na nane ambaye anaishi na raia wa Kenya ana haki ya kuwa raia wa Kenya anapotuma ombi.

Tuone hapo uraia mara dufu; Dual citizenship: Tulipotembelea pembe zote za Kenya, tulipata maoni kuwa kama wale ndugu

zetu Waturkana, Somali, wale wako kwa mipaka na nchi zingine, kwa border, wao pia walikuwa na maoni yao na Commission ime-recommend hivi kuhusu uraia mara dufu. 23:1 “uraia mara dufu unaruhusiwa chini ya sheria za Kenya.

(b) mtu anayepoteza uraia wa Kenya kwa ajili ya kupata uraia wa nchi nyingine kabla ya kutekelezwa kwa Katiba hii ana haki ya kusajiliwa kama raia wa Kenya anapotuma ombi lake.

(c) mtu anayepoteza uraia wa Kenya kwa ajili ya kupata uraia wa nchi nyingine, anapoacha uraia wa nchi ile ingine atakuwa na haki ya kurudia uraia wake wa Kenya aliofurahia mwanzo.

Kuachishwa uraia; article 24: “mtu atapokonywa uraia wa Kenya ikiwa tu ameupata uraia huo kwa udanganyifu, wasilisho la uwongo, kuficha kwa hoja muhimu ama kwa njia nyingizo kinyume cha sheria. Sasa hiyo ndiyo inahusu kuachishwa uraia. Nyingine unaweza kusoma.

I now want to take you to page 6 on the Bill of Rights, chapter 5 yaani sheria ya haki: Again as we were criss crossing all the Constituencies in this Country, Kenyans really felt that most of them are not aware of their rights. That it is high time these rights are highlighted, it is also high time these rights are protected by the state because if you know your rights, then you know you belong to a democratic state. Is it okay?

**Audience:** Yes.

**Mr.Owade:** Therefore it is important in this century that at this level of political maturity in Kenya, Kenyans should be fully aware of their rights and apart from that these rights must be protected by the state. So having listened to those views, the Constitution of Kenya Review Commission came up with the following recommendations and I would like to read Article 29:1 and 2 just to give you a highlight on what the Bill of Rights is all about na nitasoma kwa Kiswahili.

Article 29:1 Haki za kimzingi na uhuru; “sheria ya haki ndiyo nguzo ya msingi wa serikali ya kidemokrasia na ni muundo wa ukabalifu wa sera za kijamii, kiuchumi na kitamaduni.

(b) madhumuni ya kutambua na kulinda haki za binadamu ni kuhifadhi hadhi ya utu kwa watu binafsi na jamii na kuhitimisha vipawa vya binadamu wote.

Having said all that, I want now to take you to Article 32:1 because article 30 is simply talking of the duty of the state to promote rights, you can see that and you can read it. Let me take you to article 32:1 tuone Katiba Mpya inasema nini. The same page 6. Are we together?

**Audience:** Yes.

**Mr. Owade:** Right to life, yaani haki ya kuishi. Katiba mpya inasema hivi; “Kila mtu anahaki ya kuishi

(b) Hukumu ya kifo imefutuliwa mbali” hiyo ni recommendation ya Katiba hii.

Tuende kwa Article 33: Usawa, equality: Inasema hivi; Kila mtu yuko sawa mbele ya sheria na ana haki sawa ya kulindwa na usawa wa mafikirio ya sheria.

(b) Usawa unajumulisha kufuraia kikamilifu usawa wakati wote na uhuru wote.

Article 34; uhuru kutokana na ubaguzi, yaani freedom from discrimination na inasema hivi: “serikali haitabagua kwa maonevu ya moja kwa moja ama kwa njia isiyokuwa dhahiri dhidi ya mtu yeyote kwa sababu moja au zaidi pamoja na jamii, jinsia, uja uzito ndoa, kabila ama hali ya kitabaka, rangi, umri, ulemavu, dini, dhamira, imani, utamaduni, lugha, ama kuzaliwa. Hiyo Article inaongea juu ya uhuru kutokana na ubaguzi.

Halafu kuna vikundi vingine kati yetu kama binadamu wananchi wa Kenya ama raia ambao sasa Katiba inatoa recognition na ningependa kusoma Article 35:1, wanawake tunataka kujua Katiba hii mpya inasema nini na tutasoma kwa Kiswahili “wanawake wana haki ya kutendewa sawa na wanaume pamoja na fursa sawa katika siasa, uchumi na shughuli za kijamii.

(2) wanawake wana haki ya kupewa hadhi ya utu sawa kama ile inayopewa wanaume.

(3) wanawake na wanaume wana haki sawa za kurithi, kupata nafasi sawa ya kupata na kuthibiti mali.

4. sheria, utamaduni, desturi ama mila zozote zinazozorotesha hadhi, utu, ustawi na maslahi ama hali ya wanawake zinapigwa marufuku.
5. Serikali (a) serikali itawalinda wanawake na haki zao kwa kuzingatia hali zao maalumu na jukumu lao la kuwa mama katika jamii  
(b) itatoa vifaa vinavyotosheleza na fursa ya kuendeleza maslahi ya wanawake ili kuwawezesha kufikia upeo wa vipawa vyao na maendeleo

Halafu kuna watu wengine wazee katika jamii. Katiba mpya pia ime-recognize role ya wazee kwamba lazima walindwe na lazima wapatiwe huduma ile inayotosha kwa sababu wazee wana hekima, wana heshima na lazima tuwape heshima yao. Kwa hivyo tuangalie hapo sheria inasema nini kuhusu wazee katika jamii. Article 36:1.

“wazee katika jamii wana haki ya kuendelea kufurahia haki zote na uhuru kama ilivyo fafanuliwa katika sheria za Kenya pamoja na haki ya;

- (a) kushiriki kikamilifu katika shughuli za kijamii
  - (b) kufuatilia maendeleo yao ya kibinafsi
  - (c) kuwa huru kutokana na aina zote za ubaguzi, unyanyasaji au dhuluma
  - (d) kuishi kwa heshima na utu
  - (e) kubaki na uhuru wao.
2. “wanachama wazee katika jamii wana haki ya kuchungwa vyema na kupata usaidizi wa familia na serikali.
  3. “wazee katika jamii wana wajibu wa kufanya mpango kuhusu kustaafu kwao, kugawia watu wengine ujuzi na ustadi wao na

waendeleo kujihusisha na shughuli katika jamii.

4. wizara zinazohusika na vyombo vinavyopokea malalamiko pamoja na Tume ya haki za binadamu na haki za kiutawala --- zitachukua hatua maalum ya kujitayarisha ili kuelewa na kushughulikia mambo yanayowadhira wazee.

Sasa hivyo ndivyo Katiba mpya inasema kuhusu wazee. Tuko pamoja?

**Audience:** Ndiyo.

**Mr. Owade:** Tuone Katiba mpya inasema nini kuhusu watoto na nitasema kwa ufupi. Article 37:1. “Watoto wana nafasi maalum katika jamii. Ni jukumu la wazazi wao, ukoo, jamii na serikali kuwalea, kuwalinda na kuwaelimisha ili waweze kuendelea katika mazingira salama na dhabiti na katika hali ya furaha, upendo, heshima na maelewano na waweze kupimisha upeo wa vipawa vyao katika hali zote; kimwili, kiakili, kihisia na kiroho kwa manufaa yao wenyewe na jamii kwa jumla. Ukisoma hiyo itakuonyesha jinsi Katiba inasema kuhusu maisha ya watoto.

Halafu mkiangalia hapo article 38-ambayo pia inaongea kuhusu familia kwa sababu familia ndiyo msingi wa taifa. Katiba mpya inasema hivi, Article 38:1 “ serikali itambue familia kuwa ndiyo msingi wa umoja wa kijamii na ndiyo msingi muhimu wa taratibu za kijamii.

2. familia inastahili heshima na ulinzi wa serikali

3. kila mtu mwenye angalau umri wa miaka kumi na minane,

(a) ana haki ya kuoau au kuolewa kulingana na makubaliano ya wanaohusika

(b) ana haki ya kuanzisha familia

4. makundi yanayo oana yana haki sawa katika ndoa wakati wa kuoana kwao na katika kuvunja ndoa yao. Tuko pamoja?

**Audience:** Ndiyo.

**Mr. Owade:** Haya! Tuone walemavu, Katiba mpya inasema nini? Article 39:1 “walemavu wana haki ya kufurahia haki zote na uhuru wote uliotajwa katika mswada huu wa sheria na kushiriki kikamilifu katika jamii kama wengine. Tuko pamoja? Na mkisoma hapo mtasikia Katiba mpya inasema nini kuhusu walemavu.

Tuanguzie Article 44, the same page 7: Uhuru wa dini, imani na maoni; inasema hivi “kila mtu ana haki ya uhuru wa dhamira, dini, mawazo, imani na maoni” Sasa hiyo ndiyo inaongea juu ya dini, imani na maoni. Inge mnaweza kusoma baadaye.

Tukianguzie page 8, hapo it is talking about freedom of expression, publication of opinion and access to information na tena inaongea juu ya freedom of association yaani uhuru wa kutoa maoni, uchapishaji wa maoni, kupitia habari na uhuru wa

kushirikiana. This page inaongea juu ya uhuru hizo na unaweza kusoma lakini ningependa kusoma ya kwamba Katiba mpya inasema kila raia wa jamhuri ya Kenya ana haki ya kuona ama kusoma vyombo vyote vya habari. Kama ni KBC, kama ni KTN, kama ni Nation, kama ni nini, mna haki ya kuona, haki ya kusikia, haki ya kusoma halafu nyinyi wenyewe ndio mtakuwa na maoni yenu kwamba decision yenu iko namna hivi, tumependa hii ama la. Tuko pamoja? Kwa hivyo kila raia wa jamhuri ya Kenya ana haki kwa vyombo vya habari, kwa magazeti, ikiwa ni redio haina gani, KBC, Citizen ama nini, mna haki. Ikiwa ni Nation, Taifa, Standard, mna haki. Ikiwa ni channel gani iko TV, hiyo ni yenu kusikia ama kuona ni nini inatendeka. Tuko pamoja?

**Audience:** Ndiyo.

**Mr. Owade:** Sasa hiyo chapter inaongea kuhusu hizo. I now want to take you to the same page 9 and we are still under the Bill of Rights. If you read that, you will realize that the new Constitution in place is just not talking about your rights, is just not talking about what to expect from the state, is not just talking about the structures of the state but it is also talking about your basic needs as a citizen of this Country. Are we together? What is the new Constitution saying? There are special provisions concerning your basic needs as a citizen of this Country and that you have a right to these basic needs. Are we together?

Sasa tukiangalia hapo page 9, inaongea juu ya huduma, tuangalie hapo article 5-6, usalama wa kijamii, afya, elimu, nyumba, chakula, maji, usafi, mazingira. Those are some of the basic needs and the needs which the state has to provide according to the new Constitution proposed. Are we together? Sasa hizo zingine mnaweza kusoma but I want to take you to consumer rights, Article 64:1 and I want to read it in Kiswahili, yaani haki za wateja. Inasema hivi; “wateja wana haki ya

- (a) Kupata bidhaa na huduma zinazofaa
- (b) Kupata habari inayowafaa ili waweze kunufaika kikamilifu kutokana na bidhaa na huduma.
- (c) Kulindwa afya yao, usalama na maslahi yao ya kiuchumi
- (d) Kulipwa fidia kwa makosa yanayosababisha hasara au majeraha

2. Wanaotoa huduma watajitahidi kutafuta ushauri kutoka kwa wateja na vyama vya wateja kuhusiana na maswala yanayowaadhiri. Tuko pamoja?

**Audience:** Ndiyo.

**Mr. Owade:** Ili wateja sasa mjue mko na haki na wale wanaowahudumia wawahudumie sawa sawa kwa sababu ni haki yenu na mko kwa nchi huru ya jamhuri ya Kenya. Tuko pamoja?

**Audience:** Ndiyo.

**Mr. Owade:** I want now to take you to Article 68, the rights of arrested persons; Article 68. Rights of arrested persons that is haki za watu wanao tiwa nguvuni. Inasema hivi; 68:1 “kila mtu anayetiwa nguvuni kwa madai ya kufanya kosa ana haki ya

(a) kubakia kimya” - Kuna hiyo haki

(b) kufahamishwa kikamilifu katika lugha anayoelewa”. Tuko pamoja? Hiyo lugha lazima iwe ni lugha ambayo unaelewa. Si kuambiwa unajua sheria Cap. hii inasema hivi, inasema hivi. Lazima umwambie wasi wasi inasema hivi kwa lugha ambayo unaelewa. Tuko pamoja? Tena inasema, “hata ingawa utabaki kimya” Pia sheria inasema, hapo (i) kuhusu haki ya kubaki kimya na kuhusu hadhari za kutobakia kimya. Pia utaambiwa hivyo.

Sasa hiyo ndiyo inaongea juu ya... (end of tape one)

Rights of persons held in custody; Page 10 article 70, tunataka kujua wale wako kwa custody kama hao pia wana haki. Haki za watu walio kisuisini; Article 71 inasema hivi “watu wote walio kizuizini chini ya sheria wawe wamehukumiwa au la wataendelea kuwa na haki zao chini ya Katiba isipokuwa haki hiyo iwe haiambatani na uhalisi wa kuwa kuwa kizuizini” Tuko pamoja?

**Audience:** Ndiyo.

**Mr. Owade:** Inginge mnaweza kusoma. I want now to take you to representation of the people; the electoral system and process. That is chapter 6 page 11 na nitasoma haraka sana Article 76: General principles of electoral system. Article 76 inasema hivi, as far as the draft Constitution is concerned: Uwakilishi wa watu; utaratibu wa upigaji kura: 76.1 “mfumo wa upigaji kura una msingi kuwa raia wote wana haki ya kupiga kura na kugombea uchaguzi wa Bunge na mashirika yenye mamlaka”. Tuko pamoja?

2. kupiga kura ni kwa siri

3. uchaguzi ni wa uhuru na haki

4. uchaguzi utahakikisha uwakilishi sawa wa watu

5. uchaguzi utahakikisha uwakilishi wa uhaki wa wanawake, walemavu na walio wachache.

6. uchaguzi utaendeshwa na shirika huru ambalo haliingiliwi kisiasa”. Tuko pamoja?

Then, I want to take you to Article 78.1, the right to vote; haki ya kupiga kura. Katiba mpya inasema hivi “raia mwenye umri wa miaka kumi na minane na zaidi ana haki ya kupiga kura.” Let us see page 12. Kwa hivyo hiyo ni haki ya kupiga kura.

Halafu tuangalie hapo chini Article 81 na inasema hivi “katika kila uchaguzi...” ninataka msikie kwa makini sana kwa sababu hapa ni muhimu hasa wakati huu ambao tunakaribia uchaguzi, na tuone hii swala Katiba mpya inasema nini kila saa inakaribia uchaguzi. “katika kila uchaguzi, tume ya uchaguzi itahakikisha kuwa

(a) utaratibu wa uchaguzi ni mwepesi na rahisi.” Tuko pamoja?

(b) Sanduku la kura ni angavu.” Right? Yaani the ballot box is transparent.

(c) Kura zinahesabiwa, zinaorodheshwa na kutangazwa na msimamizi kwenye kituo cha kupigia kura.” Right? Inatangazwa hapo hapo. Hakuna maana ya kupeleka pande zingine. Si hiyo ni kweli?

**Audience:** Ndiyo.

**Mr. Owade:** Wacha tupige kura na hapoo mahali wanapigia kura, watangaze wazi wazi.

**Audience:** Ndiyo.

**Mr. Owade:** Kama ni elfu mbili ni elfu mbili.

**Audience:** Basi.

**Mr. Owade:** Si kupeleka mahali pengine. Haya! Tuone Article 82, the same page 12, tuone Katiba mpya inasema nini kuhusu wagombeaji bila kupingwa, yaani unopposed candidates. Tuone huu mswada unasema nini juu ya wagombeaji bila kupingwa. “mahali ambapo mgombeaji mmoja tu ndiye aliyependekezwa siku ya uteuzi kabla ya uchaguzi, hata hivyo uchaguzi utafanyika kwa minajili ya kuamua na kudhibitisha idadi ya kura ambacho kila chama cha kisiasa kimepata kwenye uchaguzi.

2. baada ya kura kuhesabiwa, mgombeaji atakuwa amechaguliwa” Sasa hiyo ndiyo inahusu Katiba mpya.

Halafu ninataka nisome tu kwa kifupi functions of the Electoral Commission, tujue hii Tume ya Uchaguzi, functions zake kwa Katiba mpya inasema nini. Article 84.1. “Tume ya uchaguzi ina wajibu wa;

- (a) Kusajili wa kuendelea wa wapiga kura” Sasa ile maneno ya ku-register voters tunataka iwe continuous, si ati iko tarehe fulani. Iwe tu kila wakati mtu anaweza ku-register. Tuko pamoja?
- (b) Kuweka mipaka ya maeneo ya Ubunge” Kwa sababu hii pia inaleta shida sana. Mpaka kwa eneo hili la Ubunge na lile. Si hiyo ni kweli?
- (c) Uendeshaji na usimamizi wa uchaguzi na kura za maoni
- (d) Uendelezaji wa uchaguzi na kura za maoni, uhuru na zenye usawa
- (e) Usimamizi wa vyama wa kisiasa
- (f) Usimamizi wa mfuko wa fedha vya kisiasa
- (g) Usuluhishaji wa ubishi wa uchaguzi
- (h) Uendelezaji wa elimu ya uraia na utamaduni wa demokrasia
- (i) Kusaidia katika uchunguzi, ufuatili na utadhmini wa uchaguzi.

Hizo ndio zile authorities tumepatia Tume ya Uchaguzi kwa sababu tunataka hata vyama vya kisiasa viwe na discipline, vile

wanaendesha mambo yao. Si ati mtu anaamka tu anasema chama changu cha kisiasa ni hiki ama kile, chama ambacho hakina hata discipline. Tunataka Tume ya Uchaguzi iwe independent Commission ambayo inalinda na kuangalia sheria inasema nini kuhusu chama cha Kisiasa. Tuko Pamoja?

Tusome hapo kwa kifupi tu, the right to form a political party, Article 87.1 Haki ya kuunda chama cha kisiasa. Inasema “ kwa mujibu wa ibara 50, raia yeyote ana haki ya kuunda chama cha kisiasa

2. chama cha kisiasa kina haki ya msaada wa kifedha kutoka kwa serikali kwa msingi ulioagizwa na sheria ya Bunge.  
3. Hakuna mtu atakayetumia rasilmali za taifa kusaidia chama cha kisiasa.” Kwa hivyo ukisoma hizo zingine inahusu roles and functions of political parties, qualification for registration na tumeweka conditions ngumu sana na hizi conditions zikiwa fulfilled, tuna-predict kwamba with the coming into force of this Constitution, even after about twelve months, huenda tukawa na vyama tatu vya kisiasa pekee yake katika nchi hii ya Kenya na sasa mtasoma hapo kwa makini ili ujue inasema nini halafu maneno ya pesa na jinsi ya kutumia pesa ya chama cha kisiasa, unaweza kusoma hapo.

Pengine hata hapo kwa party discipline, Article 98. 1-4 inaongea kuhusu party discipline na ningependa tusome hapo. Nidhamu ya chama; “Katiba au ibara za ushirikiano za chama cha kisiasa itakuwa na masharti yatakayo hakikisha kuweko kwa nidhamu chamani na yanayo ambatana na kanuni za kidemokrasia, haki na uongozi wa kisheria.

2. chama cha kisiasa hakitamwadhibu mbunge wa chama kwa sababu ya jambo alilosema bungeni katika utumiaji wa fadhila za uhuru wa kutoa maoni bungeni  
3. chama cha kisiasa kitatekeleza shughuli zake kwa njia inayoendeleza demokrasia na siasa za amani. Tuko pamoja?

I want now to take you to chapter 7, Bunge; the Legislature. Am I too fast?

**Audience:** (Response not clear)

**Mr. Owade:** Okay. You will allow me at this juncture now to talk in English halafu nitajaribu kusema kwa Kizungu. Right? Kwa Kiswahili. This is a very sensitive area and because it is your right as a citizen, as a voter, it is important that you understand the new structure, which the Constitution of Kenya Review Commission is recommending on our Parliament. Are we together?

**Audience:** Yes.

**Mr. Owade:** I want to start by saying this, I will combine both devolution and Parliament and I would like to give you an overview of what it is all about. Having collected views of Kenyans in all the two hundred and ten Constituencies in this Country, having criss crossed various corners of this Country, wananchi had a lot of views on the structure of Parliament and we collected and collated those views and we came up as a Commission with the following recommendations. The

recommendation we made is that Parliament will be composed of two Houses; are we together? The first House will be known as the Upper House, the Upper House is the National Council, Bunge la Taifa. Ile ya pili tunaita the Lower House, in other words the National Assembly.

National Assembly is the one we have at the moment representing constituencies. They are 210 and the new Constitution is saying let the 210 remain as they are. Why? The national assembly represents two hundred and ten constituencies and the new Constitution is saying let us retain them as they are. The other House which is the Upper House is the National Council.

I now want to explain the structure and the composition. The National Council council shall be composed of a hundred Members of Parliament. Are we together? Out of these a hundred, 69 shall represent 69 districts in Kenya. In other words these districts, excluding Nairobi will send a representative to the National Council. Are we together? So, these 69 districts sending representatives to the National Council and Nairobi will send one, so the total will be 70. The other thirty, the Constitution of Kenya Review Commission is recommending, having listened to the views of Kenyans, let the seats be reserved for women. Are we together?

**Audience:** Yes.

**Mr. Owade:** Now how will this one be done? Kwa maswali tutauliza saa zingine tafadhali. How will this one be done? Thirty women will be elected directly according to provinces. Each province will elect four representatives. Are we together? So four representatives times seven comes to?

**Audience:** Twenty-eight.

**Mr. Owade:** Twenty-eight. The other two will come from Nairobi. So we are saying of the eight provinces, seven will present four representatives each but Nairobi will present two. In all these provinces, these women, the four representative, will be elected directly by people in that province. Are we together?

**Audience:** Yes.

**Mr. Owade:** So these representatives, the seventy, again we are saying they will be elected directly by the people in that district. So that is the composition of the National Council.

I want to go to another sensitive issue and I want you to listen very cautiously. In that Parliament, which is the current Parliament, which we now call the National assembly, we have added another group. This one is ninety and I want to explain what it is all about. Having listened to the views of Kenyans, majority of Kenyans according to our data felt that other sections

of the society need to be represented in that Parliament because they feel Parliamentarians when they go there they are just serving their own political interests apart from serving the interests of their constituents which some time they do not do so well, they just defend more of their political interests. Therefore, the youth in this Country said even us it is time we have a representative in Parliament, the disabled or persons with disability also felt they needed to be represented in Parliament, the marginalized groups, the ethnic groups or the small tribes, because in some regions you may go and you find that because you don't have enough population, the other dominant people or dominant ethnic groups or a dominant party will keep on winning all the time. Therefore the ethnic minorities or even some interest groups in our communities are not adequately represented. Ikiwa watu wa biashara, Chamber of Commerce and Industry for example, they also feel they need to articulate their interests in the National Assembly. So, we wanted now to balance, what do we do as a Commission? People said no, we need also to have proportional representation in Parliament. Having listened to all that, the Constitution of Kenya Review Commission recommended, let us ninety additional members in Parliament. How will this one be done? One year before every General Election, each registered political party in Kenya shall submit a list of 90 people to the Electoral Commission of Kenya. Are we together?

**Audience:** Yes.

**Mr. Owade:** Once they have submitted, even if they are a hundred political parties, they will submit but remember, there are very tough conditions which now the entrenched independent Electoral Commission will have to effect. Does that list have a national outlook? Does that list have somebody coming from North Eastern, Nyanza, Coast, Eastern, the whole Country? That is the first condition.

2. Does it have a priority? The disabled at the top? The youth, the marginalized groups or ethnic minorities? Special interest groups? That category must be fulfilled and it can be proved so that it is not a Luo, a Luyha, a Kikuyu or a Kalejiin, so that it does not belong to a particular class of people, the educated only or the uneducated only. So that it does not belong to all these people who are from a marginalized group. It must have a national image and national representative and the Electoral Commission will have to look into all that.

I now want to go to the question of whether they are nominated. I want to tell you here and now, in broad day light that you shall elect these people directly. How will you do this? During the voting day, and I want to dispel any misunderstanding to clarify issues which have been misunderstood because some people are opportunists and they fear that these people are going to rival them in Parliament, therefore they do not want them here. I want to clarify it this way: during the Election Day, the voting day, you shall vote twice in the ballot box.

Normally when you go to the constituencies, somebody might say you know me, I am just interested in a political party and not a candidate. Isn't it? Or, I am just interested in Honourable so and so and not the party. For example, may be if it is Ford Kenya, somebody says that my interest is just FORD – Kenya, and not a candidate or my interest is just in a candidate and not

FORD – Kenya. Isn't it? But we are now saying in the new Constitution, let us vote for the candidate and also let us vote for the party directly. Now, when we shall have the total overall votes in the whole Country, KANU for example, out of the total votes for the whole Country, KANU may have let us say in terms of the Party, leave alone the candidates now, in terms of parties, KANU may have let us say one million votes all over the Country, so let us say of the total votes of the whole Country, KANU gets 10% right? That 10% will be used against the ninety people so it means 10% of 90 is how many?

**Audience:** Nine.

**Mr. Owade:** So in this case, it means we give KANU nine seats. In other words, you have voted directly for the political party, so the number of votes the political party gets is what will be calculated against that number of ninety. In case KANU gets a hundred per cent of ninety, KANU will take all the ninety seats. Are we together?

**Audience:** Yes.

**Mr. Owade:** But then, there are conditions to be fulfilled, the youth have to be at the top, the disabled, the ethnic minorities, special interest groups, that is a condition which must be fulfilled to the Electoral Commission of Kenya, they will publish it in the newspaper, let it be open and everybody is aware of it. Are we together? In case there is no automatic winner, various political parties will get their seats in accordance with the percentage against the ninety seats. Are we together? It is difficult; I can see mama is looking at me. The coordinator will really have to explain to you so that you understand it. I want you to read it very carefully but that it is not complex as such. Parliament will have to work with the political parties that will come to enact laws which political parties will define these conditionality so that that list of ninety is maintained and one year prior to the general election, it has to be clear what groups have been classified here and then during the election day, you will vote. So, it means if you don't give respect for your political party, your political party will not get the ninety.

So, the more you vote for your political party, the more it gets seats in Parliament so it will be direct elections during the voting day. So you will vote twice on that particular day but that ninety must reflect a national outlook taking into account various interest groups in that priority in that order and you as a voter and a citizen of Kenya, you have a right to sue the political party or to sue the Electoral Commission, that is why we are saying one year prior to the election, the list must be out. Are we together?

**Audience:** Yes.

**Mr. Owade:** So, that is about it. I now want to take you to devolution. Devolution in Kiswahili, let me just refer; it is a bit difficult in Kiswahili. Devolution is in page 26 and I am combining devolution and Parliament together because they go hand in hand so that you understand what it is all about.

Devolution of power is in page 26 and I am not going to read all of this but I want just in brief to tell you that again as you are collecting views of Kenyans all over this Country, Kenyans felt that we need to bring the government closer to the people right from the village going to the top instead of coming to the top going down. Are we together?

**Audience:** Yes.

**Mr. Owade:** So the main reason is one, to bring the government closer to the people.

2. To make the people understand various structures of government because they will now be nearer to it, you are talking of a village government, a locational government, a district government. It is nearer to you as mwananchi of Kenya .

3. We want wananchi to have increased active participation in the management of their affairs. When you talk of separation of power, let that not be concentrated in a few hands, let us see power being distributed along various units to manage the people of Kenya and in order to provide efficient services to the people of Kenya. Are we together?

Therefore, I want us to read levels of government in page 26, Article 215. It reads as follows: “The powers are devolved to the following levels.

- (a) Village
- (b) Location
- (c) District and
- (d) Province.

Let us see what the village government is all about, 215.1: “the village decides whether the village Council is constituted by village elders through elections” Are we together? It is the village that decides whether the village council is constituted by village elders through elections.

- 2. The village council shall contain no less than six members and no more than ten members.
- 3. The village decides the system of village government including the role of the village Council.

Let us go to the Locational government, 217.1 “The Locational Council consists of two representatives, one of whom shall be a woman elected by each village council from among its members.

- 2. The location administrator is the Executive authority of the location.
- 3. The location administrator shall be elected by the registered voters of the location.

Let us go to the district government, 218.1 “ The legislative authority of the district is vested in the district council

2. The district Council consists of members directly elected by the registered voters of the district” This shall also be the Member of Parliament. You remember? “The district council shall consist of not less than 20 or more than 30 members.

3. The district administrator is the Executive authority of the district.

4. The district administrator is elected directly by the registered voters of the district
5. The district administrator with approval of the district council appoints chief officers from persons who are not members of the district council.
6. The district administrator can be dismissed by a vote of the majority of members of the district council that is supported in a referendum by a majority of those voting in the referendum.

Provincial government, 219.1: “The legislative authority of the province is vested in the provincial council.

2. The provincial council consists of two representatives one of whom shall be a woman chosen by each district council from among its members.

3. The provincial Executive committee consists of district administrators
4. The provincial administrator is the Executive authority of the province.
5. The provincial administrator is appointed to the provincial council on the nomination of the provincial Executive committee from amongst its members.

I want to say briefly as follows; that in the devolved structure, at the lowest level, we have the village council. The village council shall represent all the registered voters in that council. All the people in that council will be represented in the village council. Are we together? Moreover, its overall head will either be elected or the people in that village will find a way of giving authority at the top, to him or her. Are we together? Therefore, we are saying all the local issues be they customary issues, issues of marriage, the traditional court system, issues of basic needs, allocation of resources, we are saying those at the village level, the village council shall be able to plan, project them, decide and forward them up. Are we together?

**Audience:** Yes.

**Mr. Owade:** Now, Locational government: Locational government is headed by the locational administrator. The composition of the locational council is as follows. All the village councils within the location constitute the locational council. Are we together? So that each village in that location is represented and in each village also we have a woman representative. So, the locational government comprises all the village councils within that location so that any decision made, any plans made, must be reflective of every village in that location. Are we together? So Locational administrator must be elected directly by the people in that location so that he has got the mandate of the people.

From the locational council we go to the district council. At the district council, all the locational councils constitute what is known as the district council. In other words the locational council will also send representatives at the district council. Are we together?

**Audience:** Yes.

**Mr Owade:** So that again, the interest, the need, the plan, the project, the resources made at the district level is that one determined by various locations. Are we together? The head of the location who shall be the Locational administrator is elected directly by the people in that location. Somebody must be wondering what will happen to the Chiefs and the Assistant Chiefs and I want to come to that.

The new Constitution is saying that indeed for the sake of equitable distribution of resources, for the sake of the leaders of a given community running things efficiently, these people might be elected by the people in this region so that if he fails in his duties, you as the people in that region will sack him from his job and you do not have to wait for his term to end. You can terminate his duties any time.

Audience: (Response not clear)

**Mr. Owade:** Because he is with you here and it is you who have given him the mandate. Are we together?

**Audience:** Yes.

**Mr. Owade:** We are saying in the new Constitution that we are not sacking the Chiefs and the Sub-chiefs, I want to clarify that one now. They will have the same salaries if they are promoted they will continue to have, the District Commissioners the same, the Provincial Commissioners the same, right? They will maintain there jobs, we are not even sending them home, no, but we are saying they are employed by the Public Service Commission and the Constitution is giving the Public Service Commission responsibility to protect the Chiefs, to protect the DCs, to protect the PCs but give them other performance driven jobs. Are you getting it?

**Audience:** Yes.

**Mr. Owade:** We are not dispensing them at all, they have a right to maintain their jobs but these jobs will have to be determined by the Public Service Commission but even the Public Service Commission, the Constitution is saying no, they won't dismiss them, they will not relieve them of their jobs, give them passing ---(inaudible) with the same salary and with good life living so that may also...because if you now want to sack these Chiefs and Sub-chiefs, how are they going to look after themselves and even their dependants? Are we together?

So, we are saying the Public Service Commission has got --- (inaudible) which it draws from the new Constitution that these people need to be protected. The Public Service Commission must define what kind of jobs they are going to do. They are not going to be idle; the Public Service Commission must give them a job to do. Are we together? So that even as we are

talking of the devolved units, may be at the district, may be at the provinces, may be at the location, although we shall now have bosses here who are elected directly, we will also have some functions, some duties, some obligations to do at this level so may be Public Service can decide let him go and look after may be matters of security, matters of transport, matters of finance as a secretariat. An employee of the of the Pubic Service Commission but under the elected district administrator. Are we together?

**Audience:** Yes.

**Mr. Owade:** So then they come more or less as technocrats, they come more or less as giving service to the people but now the district administrator, the locational, the village councils, those are the bosses at those units. Are we together?

**Audience:** Yes.

**Mr. Owade:** So that is the position I wanted to clarify because people have been really confusing things and saying hii Katiba inawachisha kazi machief na kila mtu, hapana. Tunasema Katiba inapatia Public service nguvu.

I want to take you to... still on the Legislature, I want to take you to page 18 Article 142, down there: dissolution and prorogation. Are you there? It reads like this, and I want you to listen very carefully, "The term of the National Council is four years, be it at the village, location, district" It will be strictly four years. At the end of the four years, we are going back to elections but, remember, it is your duty as a voter, and if he is not performing you are going to dismiss him. Right?

**Audience:** Yes.

**Mr. Owade:** We don't have to wait until four years. Right? Then, 2. Unless sooner dissolved, the National Assembly shall continue for a term of five years. There is also somewhere there I will read for you later, even the Member of Parliament, you do not have to wait for five years. If he is not performing, you have a right as a voter, as a citizen in that constituency to terminate his job because he is there because of you. He may not be performing, he may not be doing well, I am not inciting everybody against the said being, what I am just saying is we are trying to look at performance, we need to be performance driven, value driven, we elected you, we gave you the mandate to do ABCD but if you are not performing we have a right to recall you but again we are saying some people or some opportunists can use this opportunity just to cause havoc in the constituency and to terminate the life of a Member of Parliament. Don't you think so? Yes. Out of fitina and out of malice, they can just decide no, no no, let us destroy him.

There are some checks and balances that we have put in place and if you... we shall go to the last statement there where it is talking of actions to be taken by Parliament. Parliament and the Electoral Commission will chart out mechanisms and Parliament will have to sit down and define law, basic laws to ensure that malice is not used to dislodge a Member of Parliament.

However as I told you, this is not the Constitution, this is a Draft. Keep on reminding yourself that. Right? So that you as the people of Eldama Ravine you may have objections to some provision here and you have a right to say so that when you come to the Conference, some of these issues can be amended if you do not feel it is the proper way. Are we together?

**Audience:** Yes.

**Mr. Owade:** Now having said that, I want now to take you to the Executive, that is chapter 8, page 19. So, on the Executive, as you realize the Executive is one of the most important organs in the government. We have the Executive, Judiciary and the Legislature. Already I have highlighted to you about the legislature and I want to tell you what the new Constitution says about the Executive. As we were collecting views from Kenyans, they were also concerned that a lot of people tend to think that if somebody is elected as a President, therefore that person or whatever tribe he comes from, that tribe is going to benefit. Are you getting me?

**Audience:** Yes.

**Mr. Owade:** They think that that tribe is going to do what? They think that that tribe is going to benefit and so they feel like these people are really feeling good because they have a President and they feel this President will give them everything on earth and that this President will give them a special favour. Are you getting me? So therefore other communities tend to develop some attitude like, oh, this kind of group, they are so lucky; when it comes to jobs, when it comes to poverty, nobody is sleeping hungry. Right? When it comes to training, everybody in that area is going for training outside the Country. When it comes to some favours, they are always given special favours, oh, these people are so good and so they start to sideline that community, they become jealous of it. Are you getting the point?

**Audience:** Yes.

**Mr. Owade:** And yet that community is very innocent and yet even that President can be very innocent, are you getting the point? But it is just an attitude that if so and so is a President, therefore that region is feeling good. The new Constitution is saying can we have a change of attitude whereby all Kenyans feel equal. The President is there for the sake of the whole republic of Kenya; let us look at him as the symbol of the nation, not a symbol of a particular tribe. Are we together? So, the new Constitution is trying to dismantle this attitude, this impression, that a particular community is benefiting because of so and so. So in order for us to remove this barrier, to remove this bad feelings we felt, in the new Constitution and also reflecting the views of Kenyans, let us balance the power in the new Constitution because it is this power which is making other communities feel that the communities which have the President have got some special favour. Are you getting the point?

**Audience:** Yes.

**Mr. Owade:** So, taking into account all that, the new Constitution is recommending that we should have a President but he shall have power so we shall call him the Executive President. He will remain the head of state but somebody is there also to assist him to address these imagined inequalities, which may not even be there. So we are saying let him have a Prime Minister to help him run the government. Are we together?

Now, having said all that, we want to see whether the new Constitution has got authority for the ---(inaudible) Constitution. So let us read page 19, article 149; structure of the National Executive: “The national Executive of the republic of Kenya comprises the President, the Vice-President and the Cabinet.” Let us see authority of the President.

- (a) Is the Head of State, Commander in Chief of the defence forces, the Chairperson of the National Security Council and the Chairperson of the defence Council.
- (b) Is a symbol of the unity of the Nation and has responsibility to promote and enhance the unity of the nation, safeguard the sovereignty of the republic, promote and respect the diversity of the people and protect the human rights and the fundamental freedoms.
- (c) Shall uphold, safeguard and respect the Constitution and the rule of law.

2. The powers of the President shall be exercised in accordance to the Constitution and the laws.

3. The President shall not hold any other public office including any elected or appointed office within a political party. Are we together?

**Audience:** Yes.

**Mr. Owade:** Let us now see the state functions of the President: “The President,

- (a) Shall address the opening of each newly elected Parliament in accordance with article 141.
- (b) Shall address a special sitting of Parliament once each year as provided for in article 14.
- (c) The President may address Parliament at any other time
- (d) The President may dissolve Parliament only in the circumstances contemplated in Article 142.

Then we have also have appointive power over which the President has the Executive powers to do. “The President,

2. Shall appoint and may in accordance to this Constitution dismiss the Cabinet consisting of

- (a) A Prime Minister who shall be leader of the political party” I will come to that.

- (b) Two deputy Prime Ministers
- (c) Not more than fifteen Ministers
- (d) Not more than fifteen Deputy Ministers
- (e) Judicial officers
- (f) Any other public officer who the Constitution requires the President to appoint subject to the applicable provisions of the Constitution or legislation.

Then down there in Article 152, we have the legislative functions of the President which shall include:

- (a) The President may initiate a proposal legislation and refer it to the Cabinet with a request that the Cabinet approves submission of proposed legislation to Parliament as a Government Bill or
- (b) refer to a Committee of Parliament with the request that the Committee debates the Bill as a Committee and

2. When presented with a Bill enacted by Parliament, the President shall do one of the following:

- (a) Refer the Bill back to Parliament for reconsideration in accordance with article 126.
- (b) Refer the Bill to the Supreme Court of Kenya for an opinion of the Constitutionality of the Bill in accordance with Articles 124 and 125
- (c) Assent to and sign the Bill.

3. The President with prior approval of the Cabinet and the relevant Committee or Parliament shall assent to sign any regulation authorized in terms of a Act of Parliament.” Others you can read on your own. That is basically the authority and the state functions of the Parliament in the new Constitution.

I want to take you to page 20, Article 155. Are we there? The right to vote and timing of Presidential elections. What does the new Constitution say? “The election of the President shall be direct by adult suffrage through a secret ballot and shall be conducted in accordance with this part and with an Act of Parliament regulating Presidential elections.”

Then I want to take you to number 2; “ An election of the President shall be held;

- (a) On the second Tuesday in August and thereafter on the second Tuesday in August every fifth year” What the new Constitution is recommending ni kwamba kuanzia sasa, kuanzia Katiba hiyo mpya, wananchi wa Kenya watajua tarehe gani ni siku ya uchaguzi wa Rais wa Jamhuri ya Kenya. Right? Na itakuwa kila Jumanne ya pili ya mwezi wa nane baada ya miaka mitano. Are we together?

**Audience:** Yes.

**Mr. Owade:** Ili mjue wazi wazi tarehe yenu kama wananchi wa Kenya kuchagua Rais wenu ni tarehe hii. Kwa hivyo itakuwa

ile Jumanne ya pili ya mwezi wa nane baada ya miaka mitano ili ijulikane wazi wazi.

Let us go to Article 156, qualifications for elections as President. Again according to the views of Kenyans, the Commission came up with the following qualifications, for one to be a President of the republic of Kenya. It reads thus; “A person is qualified for nomination as a Presidential candidate if the person is,

- (a) A citizen of Kenya by birth
- (b) Has attained the age of 35 years but is below the age of 70 years.” The Presidential candidate must be below the age of 70 years.
- (c) Is of high moral integrity and impeccable character
- (d) Holds a degree from a recognized University
- (e) Is nominated by a registered political party or
- (f) Is nominated as an independent candidate by at least one thousand registered voters who shall include not less than one hundred registered voters from each province.

What I wanted to clarify here is that (b), I know some people might be asking some questions. “Has attained the age of 35 years but is below the age of 70 years.” At the final chapter, we are talking of transitional provisions. We need a smooth transition from the current government into the next government. Are we together?

**Audience:** Yes.

**Mr. Owade:** And we need to take into account the interest of all communities in Kenya. It will be unfair of us as a Commission, to say that, the current elections should be held under the new Constitution, to bar for example honourabe Kibaki who is already seventy years from contesting the Presidency.

**Audience:** Yes.

**Mr. Owade:** What we are saying is that for the sake of a smooth transition and for the sake of all communities in Kenya and supporters of all these politicians in Kenya, can we say that for the current election, let us just allow the seventy as it is now in the current Constitution but after, that is in the next election after this one, anybody who is seventy and above will not be allowed to contest the Presidency but thirty five years going can be allowed. So I leave it to you during the question time and clarifications you will give your views on that. Right?

**Audience:** Yes.

**Mr. Owade:** Let us now go to page 21 Article 163: Impeachment and removal of the President. We want to see how this impeachment process will be done. We are recommending, “if two thirds of the members of the national assembly approve a

motion for the impeachment of the President for the violation of the Constitution or gross misconduct, the speaker of the National Council shall convene a meeting of the National Council to hear charges against the President. In other words, for issues of impeachment and removal of the President, it is the National Assembly which shall come with such recommendations and if two thirds say so, it will have to go to the National Council, yaani wale representatives kutoka district ndio sasa wataamua hiyo maneno ya impeachment ama removal of the President.

Kama wamekataa, haitafanywa na kwa hivyo kipawa na mamlaka yote imepewa National Council.

Office of the Vice-President; that is Page 21, Article 165: Katiba mpya inasema hivi in 165.1 “There shall be a Vice President of Kenya at all times.

2. Each candidate in a Presidential election shall nominate a person, duly qualified for elections as the President, as a candidate for Vice President.
3. The Electoral Commission shall not conduct a separate election for the Vice-President but shall declare the candidate nominated by the person who is elected as a President to be elected as the Vice-President.” What I want to say here in very simple language, we are saying from now on, if you are a Presidential candidate, be it in Ford-Kenya, in KANU, in Ford Asili or whatever it is, whoever is going to be your Vice President, you have to announce it now and now. Are we together? Let it be open to the Wananchi of Kenya who your Vice President will be. Kama ni Ford-Kenya, the Presidential candidate there must announce who his running mate will be. Are we together?

**Audience:** Yes.

**Mr. Owade:** So that in case you win the seat and you are declared the President, the person who is your running mate automatically becomes your Vice-President so as to avoid this situation whereby sometime wananchi live in fear or wananchi don't know what is going on above. We want to remove this kind of suspicion, this kind of panic so that from the very day it is announced I am standing as the President it is known that my running mate will be so and so and so that when I become the President, he automatically becomes your Vice-President. That is a proposal that we have and again we leave it for you to decide.

May I now read to you the duties of the Prime Minister on Page 21? The Prime Minister and the Cabinet: Page 21 part 3 Article 170; mmechoka tayari?

**Audience:** Hatujachoka.

**Mr. Owade:** “The Prime Minister is the leader of the Cabinet and presides at meetings of the Cabinet.

2. The Prime Minister and the other members of the Cabinet exercise Executive authority within the republic by,
- (a) Developing and implementing National Budget and Policy
  - (b) Preparing and initiating Government legislation for introduction in Parliament
  - (c) Implementing and administering Acts of Parliament.
  - (d) Coordinating the functions of Ministries and Departments
  - (e) Performing any other Executive function provided for by the Constitution or an Act of Parliament except those functions assigned to the President.

Those are some of the major functions of the Prime Minister. I want to brief you again on the structure of the Cabinet as follows, the rest you can read on your own. In the new Constitution, we are recommending also according to the majority of the views of Kenyans, we are recommending as follows: “The President who shall be Executive President shall have the powers to appoint the Prime Minister. In other words, the President shall be the Head of State but the Prime Minister shall be the head of government. Are we together?”

**Audience:** Yes.

**Mr. Owade:** Then Ministers in the Cabinet will be recommended by the Prime Minister for the President to appoint and in other words the President can only appoint the Ministers on the recommendation of the Prime Minister. Then, I have some worry here but, what I mean is that whereas the President has got the Executive authority and power to appoint the Prime Minister, he has got no choice. Parliament has been given power in the new Constitution because Parliament is the representative of the People so what we are saying is that the President will appoint the Prime Minister who must be the leader of the majority party in Parliament. If KANU is the Majority party in Parliament, the leader of that Party KANU in Parliament will automatically become the Prime Minister but again we are saying, situations might arise in Parliament whereby we don't have a majority leader, you know like in other countries it does happen isn't it?

**Audience:** Yes.

**Mr. Owade:** So the new Constitution is providing for a coalition of parties; parties can agree to marry, not to merge, (Laughter) like the NDP/ KANU style. They can just agree to may be a temporary marriage, to work together so we are providing for a coalition of parties. The coalition of parties will give the majority and in that case, the leader of that coalition becomes the Prime Minister but again we saying that situations might arise in Parliament, mnajua Bunge huwa na maneno sana, ambapo kwamba huyo kiongozi anayewashinda watu wengi kwa kiti cha Bunge hana confidence kwa wabunge halafu keshowe anapinduliwa tu, leader of coalition pia anapinduliwa tu, sasa kuna kuwa na anarchy kwa Bunge.

In that situation, the Constitution is still giving the President power to choose any Member of Parliament, to appoint any Member of Parliament who commands majority in the House or commands confidence to become the Prime Minister. So in other words we are saying he will appoint either the leader with the majority party or the leader of the coalition or any Parliamentarian who cuts across, who has the loyalty of the Members of Parliament so this is the position as per the new structures of the Prime Minister.

The Prime minister will be assisted by two deputy Prime Ministers and down there we are saying again as far as the views of Kenyans are concerned and we leave for you to decide, we have recommended that we have not more than fifteen Ministers in the Cabinet. Why we are saying that is because Kenyans were complaining that we do not need to have too many Ministers let them be fifteen. Another controversial issue, I call it controversial deliberately, is that Ministers cannot be Members of Parliament. Why? Views of Kenyans were saying that Ministers tend to be too busy in the offices, even accessing their leaders is a problem. He wants to travel to Nairobi, he is busy, he has this appointment here and there so constituents of some places where the ministers work were complaining that these Ministers are not serving us fully. Either he remains a Minister or a Member of Parliament to address our basic needs. Therefore Kenyans recommended let Ministers not be Members of Parliament.

Two, some ministers when they are appointed, they do not deserve those positions, right?

**Audience:** Oh yes.

**Mr. Owade:** So it is like he is just there as a Minister for Health but he may have been a retired General of the Armed Forces.

(Laughter)

What does a retired General of the Forces know in the Ministry of Health?

**Audience:** That is true.

**Mr. Owade:** Right? But if he is a Medical Doctor or a technocrat in that field he is the Minister for Health, do you have problems with him?

**Audience:** No.

**Mr. Owade:** Yes. Professor Ongeru I think is qualified for that job. So we are saying let us have people who merit those positions. If he is a minister for health, he has the qualifications. Minister for education, he has that qualification and he can

address problems facing that Ministry and we are saying let the focus be the need of addressing the problems of Kenyans. So let them be technocrats, let them be Professional confined to their Ministries so that they are able to address the problems we have in the Civil Service, these problems facing ministries.

If he is a technocrat he is an Executive and he is dedicated to that si maneno ya siasa kila saa but we are saying if Parliament is discussing important issues like Bills to be passed, during those particular situations we can allow them sometime to attend Parliament, during important Bills. Are we together?

**Audience:** Yes.

**Mr. Owade:** But Deputy Ministers will sit in Parliament permanently so that there is no question like lack of quorum. Are we together? So this was the feeling of Kenyans and again we leave it to you, whether you agree with the number of fifteen, whether you agree with the fact that Ministers should not be Members of Parliament.

Having said all that, I want now to take you to the dismissal of Prime Minister and the Cabinet. That is Page 22 article 174 and it reads as follows; “If Parliament supported by a vote of more than fifty percent of its members passes a motion of no confidence in the Prime Minister, the President shall dismiss the Prime Minister and the other members of the Cabinet.

2. The President may not dismiss the Prime Minister in any circumstance other than those contemplated in clause 1.

In other words, what we are trying to say here is that the President has the power to dismiss the Prime Minister but with the approval of Parliament. So, Parliament has to approve but that if the Prime Minister is being dismissed, the whole Cabinet should be dismissed with him because all of them have failed. Again, we leave that to you to decide whatever you feel is better.

Let me now take you to Article 181 on Permanent Secretaries and it reads, “whenever the Prime Minister, a Deputy Prime Minister or any other Minister is charged with the responsibility of a government Ministry, they shall exercise general direction and control over that Ministry.

2. There is established the office of Permanent Secretary which is an office in the Public Service.
3. Each Government Ministry shall be under the supervision of a Permanent secretary.
4. One Permanent Secretary shall be assigned by the Prime Minister to be the Secretary to the Cabinet.’

Having briefed you in all that, I now want to take you to the Judicial and the Legal Systems, that is Page 23. Many Kenyans have been wondering what the war going on is all about. Hii vita gani hii inaendelea kati ya korti na Constitution Commission. Isnt it?

**Audience:** Yes.

**Mr. Owade:** So perhaps what I will do is perhaps to read to you but I will leave for you to decide whether it is really worth to have a conflict or not. Are we together?

**Audience:** Yes.

**Mr. Owade:** You are the people of Kenya and it is you who will decide because even the courts are there because of you, you have given them the power to be there. As we criss crossed all the 210 Constituencies in this Country, the wananchi complained about the cases of delay in court. You take a case to court then it drags for years and years and you can even die before the case is completed. Isn't it?

**Audience:** Yes.

**Mr. Owade:** So we were wondering why don't the cases have a definite date. If you start a case, even if it is a murder case, within six months or one year it is finished. One year is even too long so let us have a way whereby these cases are disposed of quickly. Kenyans were crying of speedy disposal of cases.

2. People's files get lost in these and we do not know where they go. There is security there, there is a registry and yet you find files are getting lost or even documents are missing in the files. Is it not true?

**Audience:** It is true.

**Mr. Owade:** You find that those who are innocent going to jail and those who are innocent are the people who are left free. Haven't you experienced such cases here? And again it is like you find those people who have, for example somebody ameiba kuku, ile fine anapatiwa huwezi hata kuamini na yule ameiba milioni ni ile kidogo tu. Is that true? So Kenyans were wondering why are all these things happening.

Tena we also had cases of corruption in that sometimes a Judge or a magistrate anapewa kitu kidogo. This was also the complain of Kenyans and at our data centre we can show you the name of so and so on this particular date, this particular constituency said there are these cases of corruption. This Constitution is not foreign, these are the views of Kenyans and we have them here. Please I want you to get that very right. People had a lot of concern on the Judiciary so they wanted an efficient Judiciary, a Judiciary which is able to implement cases very speedily to avoid delays, you are able to get your file in the court, you are able to get all the documents.

Again, wananchi were saying that it is too expensive in the courts these days to follow your case, to the extent that ile kuku yako moja itabidi uuze mpaka usikue hata na kitu kidogo. So maneno ya kotini imekuwa expensive, unatumia pesa mingi sana and therefore to answer the views of Kenyans, the Constitution of Kenya Review Commission came up with the following recommendation in Article 187. We need an independent Judiciary, which is efficient and is able to answer the needs of Kenyans.

1. We have the Supreme Court na pengine nisome kwa Kiswahili haraka haraka. Let me start by the English one and that is Chapter Nine, the Judicial and legal system. The Supreme Court tunasema hivi: “The Supreme Court consists of

- (a) The Chief Justice who will be the head of the Judiciary
- (b) Not more than six Judges.

That is the composition of the Supreme Court. Kenyans felt that we needed a Supreme Court at the top.

Then let us go to Article 190 on the Court of Appeal which reads thus; “The Court of Appeal consists of

- (a) the President of the Court
- (b) not less than ten Judges.

And for your information, just to take you back, when we are blaming the Judiciary, blaming the Courts, we are not blaming all of them and let this one be very clear. Some of them are very innocent, some of them are very patriotic to this Country, they love this motherland and they have been serving us well. Are we together? Let us not generalize that all of them are bad.

Let us then move to Article 192, the High Court; Mahakama kuu na inasema hivi: “Mahakama Kuu inajumuhisha

- (a) Jaji kiongozi wa Mahakama
- (b) Idadi ya Majaji wasiopungua hamsini kama itakavyoelezwa na sheria ya Bunge.

2. Jaji Kiongozi anaweza, kwa kushauriana na Jaji Mkuu, kuunda vitengo vya Mahakama kuu na kufafanua mamlaka ya kisheria ya vitengo hivyo.” Hapo chini kuna mamlaka ya kisheria ya mahakama kuu na mnaweza kusoma.

I want now to take you to the Kadhi’s Court and that is in Article 199 na inasema hivi; Mahakama za Kadhi “Kuna mahakama za Kadhi, ofisi ya Kadhi Mkuu, ofisi ya Kadhi mwandamizi na ofisi ya Kadhi.

- 2. Kutakuwa na idadi isiyopungua thelathini ya Makadhi wengine kama itakavyofafanuliwa na sheria za Bunge.

3. Kadhi amewezeshwa kushikilia Mahakama ya Kadhi inayojulikana kama Mahakama ya Kadhi ya wilaya akiwa na uwezo wa kisheria katika wilaya moja au wilaya nyingi kama inavyofafanuliwa chini ya au na sheria ya Bunge.

Then we have qualifications but before I go to qualifications of Kadhis, I want to take you to qualifications for appointment of Judges, Article 195 page 24. If you read the qualification for the appointment of Judges, just go to article 195 b and c and you will find some conditions, which the new Constitution is recommending for the office of a Judge, for somebody to be qualified as a Judge na tuone inasema nini.

- (b) uwezo wa kiakili kama inavyodhihirishwa na sifa za kisomo na huduma ya kisheria
- (c) tabia ya maadili ya hali ya juu na uaminifu.

Hiyo tabia ya maadili na hali ya juu ya uaminifu ni muhimu na ni recommendation kwamba lazima judges ama magistrates wawe na hiyo. If you read the above, they are talking of years of experience, he/she must have been a judge of the Court of Appeal or a fulltime law teacher in recognized Universities. Those are some of the conditions we have for qualifications for appointment.

Ukiangalia hapo article 196, tenure of office of Judges, in the current Constitution Judges retire at the age of 74. In the New Constitution we are recommending as follows;

“A Judge and other Judicial officers to the subordinate courts shall retire from office on attaining the age of 65 years but may retire at 60.

2. On attaining the retirement age, a Judge of the Superior Courts of record may continue in office for a period not exceeding six months to enable the Judge to deliver judgement or perform any other functions related to proceedings that were commenced before the judge prior to attaining the age of retirement. So that is about the age of retirement na ukiwa una maoni fulani, you are free to give it.

The kadhi's courts that I have read to you, our brothers of the Muslim community felt that their interests also need to be catered for in terms of Islamic or Muslim interpretation and therefore we have decided to level the courts up to the level of the high court but I would like to read qualification for appointment of Kadhis in Article 202, for the interest of the Muslim community.

We are recommending the following

1. A person is qualified to be appointed as Chief Kadhi if that person
  - (a) is a Muslim of not less than thirty-five years of age
  - (b) is an advocate of the high court of Kenya of at least ten years experience as a legal practitioner and has attended and obtained a recognized qualification in Muslim Personal Law application to any sect or sects of Islam from a recognized University.

(c) has obtained a degree in Islamic Law from a recognized University and has not less than 10 years in the practice of Islamic law or has held the office of a Kadhi for a similar period.

May I now take you to article 204 on the Judicial Service Commission? We have been having a lot of tensions between the Judges and the Advocates or the Law Society of Kenya. Kenyans are also wondering why are all these things happening. In order to maintain harmony between the Judges and the Law Society of Kenya and in order to improve efficiency, independence, impartiality in the Judiciary, we have recommended that we expand the Judicial Service Commission, we expand the composition. You can read there from number 1 as from (a) and you will see the composition but may be of interest to you could be (h) which reads, “two magistrates one of whom shall be a woman elected by the magistrates.

(i) two advocates of fifteen years standing, one of whom shall be a woman nominated by the Law Society of Kenya.

(j) two law teachers, one of whom shall be a woman elected by the faculties of law of public universities

(k) a member nominated by the Council of Legal Education

(l) the chairperson of the Public Service Commission or a nominee of the chairman; and

(m) three lay members one of whom is a woman, nominated by the Non-governmental organization.

That is the new structure of the Judicial Service Commission. I want now to take you to same page, part 2, 208 on the Legal system on page 25. We have there the Attorney General and the Director of Public Prosecutions. What we are recommending now in the new Constitution is that the office of the Attorney general and the office of the Director of Public Prosecutions shall be Constitutional offices. They shall be protected as independent offices. Are we together?

**Audience:** Yes.

**Mr. Owade:** Other details you can read later but the point is that all of them now are independent offices protected by the Constitution. Can I now take you to page 26 Article 210? I had just talked of how expensive our courts have become. Isn't it? Wananchi were crying, they are lamenting about it, they cannot afford it any more and even with the Advocates it has become too expensive. In response to that, the Constitution of Kenya Review Commission has recommended a new office known as the office of the Public Defender and on Article 210 it says

“There is established the office of the Public Defender as a Constitutional office.

The Public Defender shall provide legal advice and representation to persons who are unable to afford legal services”

Hii ofisi ya Public Defender itawasaidia wale ambao hawana uwezo wa kulipa hizo pesa ambazo zitatumika kwa maneno ya koti ama ukishindwa kulipa Advocate ama nini, shida yoyote ya kulipa malipo, tuna ofisi mpya tunaita ofisi ya Public defender. Itawasaidia wale wasiojiweza na hii itakuwa decentralized mpaka chini huko kwa village council ili isiwe tu kwamba amekaa tu Nairobi hapana, ni kusaidia watu na kwa hivyo hiyo ofisi ni decentralized kuanzia chini mpaka juu na mkubwa wenu atakuwa huko public defender na tuta-streamline hicho kiti chake mpaka chini kwa village Councils.

Are we together?

**Audience:** Yes.

**Mr. Owade:** So that tuweze kumpata. Unajua sisi huwa na hii taabu, pengine wizara, pengine ofisi na hiyo ofisi tu iko Nairobi sasa kwa Katiba tunasema kwa hii decentralization ya hii district council, locational council, pengine hata hizo wizara, tutataka kama wizara ya health iwe hapa Nakuru, wizara ya kilimo iwe Mombasa. Kwa hivyo hizi ofisi pia zitakuwa decentralized. Are we together?

I want now to take you to 212, the Profession of law. It reads like this, “The privilege of practising law is a public trust” In other words if you are practicing law you are not just doing it for your personal interest, you are doing it there for the sake of the public and therefore it needs to be respected. It is a fundamental duty of every legal practitioner to

- (a) uphold the Constitution
- (b) observe, respect, protect and promote the rights and freedoms set out in the Bill of Rights
- (c) conduct the practice of law with integrity and to be scrupulously honest in all dealings with clients, other legal practitioners, the courts and any public office or officers
- (d) advocate fearlessly before the courts or any tribunals on behalf of and in the interest of, the client
- (e) assist the court in the development of the law by presenting well-reasoned, innovative and challenging arguments such as will advance the objects and purpose of the Constitution and the rule of law; and
- (f) subject to the confidentiality of a client’s business and the communications, draw the attention to the appropriate authority, to any actual or apprehended violation of the Constitution or any law.

So, as you can see, even our own brothers the Advocates have not been left behind. The way they relate to clients is that they must uphold dignity, integrity and confidentiality.

I now want to take you to the Public Service and that is on page 32; tulipotembelea pembe zote za jamhuri ya Kenya, wananchi walikuwa na malalamiko. Are we together?

**Audience:** Yes.

**Mr. Owade:** Wananchi walikuwa na malalamiko kubwa sana kwamba watumishi wa serikali wengine hawafanyi kazi yao sawa sawa. Ukiingia kwa ofisi, ni kama hiyo ofisi ni yake binafsi, si ya public ama si ya raia na kama lazima u-make appointment, ulikuwa na appointment ama la? Hiyo ofisi ni yako, hiyo ofisi si yake kwa sababu yuko hapo kukupa huduma iliyo sawa.

Tena wananchi walikuwa wanalalamika maneno ya file, ati file inapotea na saa zingine unaenda kwa wizara ingine huko Nairobi ama provincial headquarters, maneno ya ardhi ama nini unaambiwa file hakuna na ndani ya file itakayopatikana, hata hizo barua pia hakuna na unashangaa nani amechukua hizo barua na ziko wapi.

Unaingia kwa ofisi ya mtumishi wa serikali hana furaha. Hiyo ni ukweli ama hapana?

**Audience:** Ni kweli.

**Mr. Owade:** Hana furaha, ni mawazo tu na unashangaa anafikiria nini. Kwa hivyo hata ile madaraka wewe kama mwananchi wa Kenya umempatia kipawa, ile mahakama hatumii kwa ile njia sawa sawa. Makosa ni yake. Hiyo ni kweli ama hapana?

**Audience:** Ni Kweli.

**Mr. Owade:** Kwa hivyo wananchi walitoa malalamiko lakini pia watumishi wa serikali wanasema wako na taabu; malipo yako chini na tena hata promotion haifanywi kwa njia sawa sawa. Wale wanaenda kusoma ng'ambo ama training ya ng'ambo, unaona tu ile baraza ya training ile ya Nairobi wanagawanya hizo na wananchi katika sehemu hii ya mashambani mnasikia tu watu wanaenda ng'ambo. Kwa hivyo kuna mambo mabaya; malipo yako chini, malipo haifanywi kwa njia sawa, promotion inachukua muda na hata wengine wanaachishwa kazi bila any reasonable cause na hata kesi yako ikienda disciplinary committee ama nini, inaweza kuchukua muda kushinda hata ile ya kotini. Sasa hizi ndizo malalamiko watu walikuwa nayo.

Tunataka watumishi wa serikali wawahudumie wananchi wa Kenya kwa njia sawa sawa na tena tunataka serikali kwa Katiba Mpya iangalie maisha ya watumishi wa serikali ili matunda ya uhuru tunayotaka tule pamoja kwa njia mzuri. Therefore, out of all that, the Constitution of Kenya Review Commission recommended that we should have a completely independent Public Service Commission and that the Public Service Commission should also be decentralised to the district councils, locational councils mpaka chini so that the needs of Kenyans are completely reflected and attended to.

We want to improve efficiency of the Public Service, we want a public service which is impartial; they don't look at you and say you are from what tribe, which part of Kenya, what class you belong to, how educated are you. All People should be treated equally regardless of their education, their tribes, their religion, their sex and anything else. People should be treated equally and therefore that is what we recommended.

In addition to that, I want to take you to article to 265 on the establishment of the Kenya Police Service; kwa current Constitution tunaita hii nini?

**Speaker:** The Police Force.

**Mr. Owade:** The Kenya Police Force. Why do we have to use force and yet we are serving wananchi? We do not blame the Police because that is what the Constitution says; Kenya Police Force so if they use force, you cannot blame them because that is what the current Constitution is saying lakini Wakenya walisema kuanzia kwa Katiba mpya tuwaite hawa Kenya Police Service. They are there to serve the people, not to rule them and not to use force and so that is the new name, Kenya Police Service, we are recommending like that.

Halafu tuone huyu Commissioner wa Kenya Police Service atakuwa mtu gani. Appointment of the Commissioner of Kenya Police Service; tunapendekeza hivi, kulingana na maoni ya Wakenya, “there shall be a Commissioner of the Kenya Police Service and the Commissioner shall be appointed by the President but with the approval of Parliament for one term of ten years. What we are saying is that wale wabunge ambao wanawa-represent kwa Bunge, once the President ame-appoint Commissioner of Police, Wabunge watapitisha hiyo ni sawa na huyo Commissioner of Police atakaa hapo kwa miaka kumi lakini saa ile kuwachishwa kazi pia ni saa yoyote lakini Parliament ni lazima ipitishie hiyo. That is the new provision that we are recommending.

Tena number 3, no person may be appointed as Commissioner unless that person

(a) Has a degree from a recognized University; tuli-feel ya kwamba Commissioner of Police si mtu mdogo mdogo, yeye ni kama kiongozi wa taifa. Saa zingine vitu vingine vinafanywa vibaya. Yeye ni kama kiongozi wa taifa, saa zingine ana-represent Kenya kwa kamati zingine kubwa kubwa. Dunia ya sasa ina-change kabisa na tunataka Commissioner wa police ambaye ana ile tunaita laptop ya Computer halafu saa ile watu wanaongea, anafanya hivi hivi haraka haraka na anatoa hiyo ripoti. Anaweza kuambiwa hata na donors “tunataka uambie sisi project yako itakuwa namna gani, can you write the budget, uandike namna hii, programme iko namna hii, haya maneno maneno ya devolution mnasema tutakuwa na polisi kwa Wilaya, Location, itakuwa namna gani? Can you now tell us by drafting some proposal and typing it and printing it out immediately” Kwa hivyo ninasema kwa kifupi, tunataka yule mtu aliye na kiwango ile ya juu kwa sababu yeye ni kama kiongozi wa taifa.

(b) He must have served the police service for at least 10 years”

So, that is about the Kenya Police and I want you to note that in case of any queries you may raise later.

Then we go to the Prisons and that is Article 268.1 “There is established a service to be known as the Kenya Correctional Service. Hatutaki hii maneno ya Prisons any more. We are not sending prisoners there to confine them from the people but we are sending them there to correct them. Is it Okay? To counsel them and to guide them. Tusiwaone wale walio kwa jela kama ni binadamu nusu. Wao pia wako sawa kama sisi. Wao si wenye dhambi zaidi kutushinda. Are we together?

**Audience:** Yes.

**Mr. Owade:** Kwa hivyo wakiwa huko, lazima tuwasaidie na tuwape hadhi yao na huduma kwa sababu wana haki kuishi kama binadamu wote. Kwa hivyo kwa hii Katiba mpya, tunapendekeza ya kwamba tuwe na overall head ambaye ataitwa Director of the Kenya Correctional Services. Let the prisoners there be corrected and be reformed so that they are rehabilitated to be good citizens of this Country.

Chapter 15, page 33; the Defense Forces and National Security: as you realize also, the issue of security is very important in this Country. Without security, this Country would be in anarchy. Isn't it?

**Audience:** Yes.

**Mr. Owade:** And we thank God that despite the problems we have had here and there in this Country, this Country has been stable because the security people have done a lot in terms of law and order in this Country. We do hear that other Countries have war problems here and there that at least we need to give a tribute to our security forces for the active role they have played to maintain security, law and order in this Country. However, to make them more strong and more stable, the Constitution of Kenya Review Commission is proposing the Defense Forces and the National Security Council shall be composed of the following; Article 272; "There is established a National Security Council consisting of the following;

- (a) The President
- (b) The Vice-President
- (c) The Prime Minister
- (d) The Minister in charge of Defense
- (e) The Chief of General Staff
- (f) Army Commander
- (g) Navy Commander
- (h) Airforce Commander
- (i) The Commissioner of Police
- (j) The Director of Kenya Correctional Services
- (k) The Director of National Security Intelligence Service
- (l) The Chairperson of the relevant Parliamentary Committee and
- (m) The Attorney General.

The above shall constitute what we call the National Security Council.

Then Article 274, we have Defense Forces: “Know one may raise a defense force or military or a paramilitary organization except by, or under the authority of an Act of Parliament” Kitu kama Mungiki,

**Audience:** (Laughter)

**Mr. Owade:** Baghdad Boys, Jeshi la Mzee, Chingororo, all those things, we do not want to hear them any more. Tuko na Jeshi la kutosha na wafanye kazi yao. Kwa hivyo mtu ambaye anaunda paramilitary organization ama nini, Katiba mpya imekataa.

2. “There is established a Defense Forces Council and it shall consist of the following;

- (a) The President
- (b) The Vice-President
- (c) The Prime Minister
- (d) The Minister in charge of Defense
- (e) The Chief of General Staff
- (f) Army Commander
- (g) Navy Commander and
- (h) Air Force Commander

The above people shall constitute the Defense Forces. Those are our recommendations as far as the security is concerned.

I want now to take you to chapter 16, page 34; I hope I am not too fast, that is on Leadership and Integrity: at the later stages of this pullout you will see another area on leadership and integrity code of conduct and that is on page 44, if you can just look there, there is the fifth schedule on leadership and integrity code of conduct, which go together with chapter 16 on leadership and integrity.

I may not read the whole of it but I just want to tell you that the main point here is that most Kenyans were concerned that leaders in various public positions are not behaving as if they are public leaders who aim to serve the people. Mwenendo wao, tabia yao, ikiwa hao ni viongozi katika kila sehemu haionyeshi kwamba hao ni viongozi wale wema. Mtu unaona pengine yeye ni Mwalimu ama Chief ama MP ama mwanasiasa yeyote ama ni kiongozi wa kidini lakini ukiona matendo yake, fikira zake, vile anaongea na watu, unashangaa kama yeye ni kiongozi kweli? Si hata nyinyi watu wa Eldama Ravine mmewaona watu kama hao?

**Audience:** Wako.

**Mr. Owade:** We are saying, lazima tuwe na ile code of conduct, lazima tuwe na ile ethics, wawe watu wa maana. Mkiwapatia, nyinyi wananchi mmewapatia kipawa wawe viongozi, lazima hata matendo yao, ule mwenendo wao uonyeshe ya kwamba they are good leaders to serve the public. Therefore, in the new Constitution tunasema ya kwamba tutatukuwa na code of conduct ambayo kila kiongozi ata-sign. Hata mapato yake atasema aliyapata namna gani, rasilmali yake alipata wapi ili tuwe na ile equality na itangazwe wazi mtu ako na mali kiasi gani isiwe kitu ya kuficha. Tunafuata ile discipline kwa maneno ya mali ambayo mtu ako nayo ili akiwa kiongozi, anaonyesha watu mfano mwema. Are we together? So there is that leadership and integrity or the code of conduct, which will guide our leaders.

In chapter 17 on page 34, we have Constitutional Commissions and Constitutional offices; I want to read to you Article 293 on page 36; “The following Constitutional offices are established elsewhere in this Constitution” Sasa hizi ndizo zitakuwa Constitutional offices;

- (a) The Attorney General
- (b) The Auditor General
- (c) The Controller of the Budget
- (d) The Director of Central Bureau of Statistics
- (e) The Director of Kenya Correctional Services
- (f) The Director of Kenya Police Service
- (g) The Director of Public Prosecution
- (h) Governor of Central Bank and
- (i) The Public Defender

Those are the Constitutional offices na ijulikane wazi kwa Katiba Constitutional offices ni gani kwa sababu wako hapo kuwapa wananchi huduma. Ikiwa una malalamiko yoyote, taabu yoyote, uko na haki ya kwenda kwa hizi ofisi ili wahudumie nyinyi sawa sawa na hamtapelekwa mahali, hamtashikwa, ni haki yenu kidemokrasia kupeleka malalamiko yenu kwa hizi Constitutional offices na hakuna mtu atavunja hizi hata Bunge haina uwezo wa kuvunja na Katiba inapendekeza hivyo.

I want just to brief you on the Constitutional Commissions; If you look at Article 288 on page 35; Commission on Human Rights and Administrative justice. We have a composition there of what defines the Commission of Human Rights. Uzuri wa hii ni ya kwamba, kwa Katiba hii mpya, hakuna kabila fulani, hakuna section fulani kwa nchi hii ambayo italia ya kwamba hii kabila fulani iko namna hii ama iko namna hii ama wale ambao wamesoma wako namna hii ama wako namna hii. Nyinyi wote wananchi wa Kenya ni sawa na hata ikiwa tutakuwa na serikali mpya ama chama cha kisiasa kipya, Katiba inasema hivi, hizo ziko tu kama structures lakini Katiba ndiyo ya muhimu. Ule wasiwasi ambao watu wako nayo, kabila fulani pengine wanasikia

mzuri ama kabila fulani pengine wanaumizwa. Kwa Katiba hii tunasema kila jamii katika nchi ya Kenya ana uhuru kupeleka malamiko na hayo malamiko lazima yahudumiwe kwa njia ile sawa sawa na ukiangalia hapo number 3 (b) tuko na a new office hapo na hiyo ofisi tunaita People's Protector and in other Countries they may say an Ombudsman. The people's protector is there to protect you regardless of your tribe, regardless of your education, regardless of your gender and regardless of your religion; he is there to serve everybody. Are we together?

**Audience:** Yes.

**Mr. Owade:** Kwa hivyo Katiba mpya inapendekeza tuwe na hiyo People's protector na hii pia ilikuwa maoni ya wananchi watukufu wa Kenya.

Tena tuko hapo na Ethics and Integrity Commission na mnaweza kusoma halafu ninataka ku-discuss hiyo page 36; Salaries and Remuneration Commission: wananchi walilamika sana kwamba wengine hasa wabunge, kazi yao ni kujiongeza tu mshahara. Si ndiyo?

**Audience:** Ndiyo.

**Mr. Owade:** Wanajiongeza tu, wanaamka na wanasema itakuwa mamilioni na sasa kwa hii Katiba mpya tunapendekeza kuwa maneno yote ya mshahara Bunge haitakuwa na uwezo, the Salaries and Remuneration Commission ndiyo itaangalia hiyo maneno. Maneno ya pesa yote kuhusiana na hawa; the President, Vice-President, Prime Minister, Deputy Prime Ministers, Ministers, Members of Parliament, Attorney General, Judges na wale wote kwa Judiciary and all other public officers, ni hii Tume ya Salaries and Remuneration ndiyo itadecide. Hapo tumeelewa?

**Audience:** Ndiyo.

**Mr. Owade:** Then we have what we call the Teachers Service Commission in article 291; hatutaki tension kati ya serikali na walimu ama wananchi kwa sababu wazazi hawana makosa, serikali pia hawana makosa, Teachers Service Commission pia hawana makosa. Makosa iliyoko ni kwamba sheria haijawekwa sawa sawa na kwa hii Katiba mpya tunasema the ministry of education has got no role to play in as far as the interests of teachers are concerned. Let the Teachers Service Commission be completely independent and autonomous to address the terms and conditions of service of teachers.

**Audience:** (Applause)

**Mr. Owade:** Ili wakiwa na shida iwe between the TSC na Trade Union. Mambo ya promotion, mambo ya mshahara, let the Teachers Service Commission be Independent. They are able to make decisions without being influenced by anybody so that

they look at the interests of teachers at hand. That is also a new Commission that will be completely independent if you the people of Kenya agree.

Halafu tuna ile Constitution Commission; kila mara wananchi walikuwa wanalia wakisema sasa hii sheria inasema nini, wako na taabu na hakuna mtu wa ku-explain sheria inasema nini kuhusu hii na hii. The other thing I was forgetting, hii Katiba tuta-interpret kwa kila language ya Jamhuri ya Kenya; kama ni Kalenjin, kama ni Luo, Kikuyu, hiyo Katiba itakuwa interpreted ili nyinyi nyote mtakuwa na copy kama hii na tena tutakuwa na copy kwa Kiswahili na Kiingereza ili mtu asije akakudanganye ati oh, unajua sheria inasema hivi. Hiyo tumekataa, enda uangalie na ujue article hii inasema nini ili mjue Katiba inasema nini. Kwa hivyo hii Tume ya Constitution itaangalia maneno hayo.

May I now take you to maneno ya Ardhi on page 28; Ardhi na mali: again as we were collecting the views of Kenyans throughout this Country, there was nothing which topped the agenda like the issue of land. It kept on, even as we wanted to escape from it, you will be told land land, angalia hii maneno ya land sasa sijui iko shida gani lakini iko shida. Sasa wananchi walileta malalamiko sana kwamba mambo mabaya yametendwa sana kuhusu maneno ya land; title deeds, files zinapotea kwa lands na watu hawashughuliki maneno ya lands. Wengine wana acres mingi kushinda wengine na sasa wengine pia wana hiyo land na hawatumii. Iko tu hapo kama paper na unajua hiyo ni mali yake na popote anaenda hiyo ni mali yake. Sasa tunasema katika Katiba mpya na kulingana na maoni ya wakenya, land and property; 232; Mfumo wa sera ya ardhi –232.1 “ardhi ambayo ni rasilmali ya msingi ya wakenya na pia msingi wa riziki ya wananchi itahifadhiwa na kutumiwa na kusimamiwa kwa njia ambayo ni sawazishi, ya kufaa, ya kiungalishi na endelezi.”

Tuone hapo Article 237, Page 29; establishment of a National Land Commission, 237 kuanzisha Tume ya kitaifa ya ardhi, hii Tume itakuwa independent kwa sababu institutions zingine zimeanguka. Hii itakuwa independent na itakuwa Constitutional office na tuone itafanya nini. Pameanzishwa Tume ya kitaifa ya Ardhi ambayo itakuwa na mwenyekiti na wanachama wanane waliopendekezwa na kuteuliwa kwa mujibu wa kanuni za sura ya kumi na saba ya Katiba hii. Majukumu ya Tume ya kitaifa ya ardhi ni

- (a) Kuhifadhi hati ya kumiliki ardhi ya umma kwa matumizi ya wananchi wa Kenya
- (b) Kusimamia ardhi ya umma katika amana kwa niaba ya serikali na mamlaka za wilayani
- (c) Kufafanua na kurekebisha mara kwa mara sera ya kitaifa ya ardhi
- (d) Kuleta pamoja na mara kwa mara kurekebisha sheria zote za ardhi
- (e) Kutekeleza majukumu ya ziada ya usimamizi wa ardhi kwa niaba ya tawala za wilayani
- (f) Kutekeleza majukumu mengineyo kadri itakavyoelekezwa na sheria

2. Bunge itaweka sheria ya kufafanua muundo na uwezo wa Tume hii. Hivyo ndivyo Katiba mpya inasema kuhusu maneno ya ardhi, malalamiko yote na management ya ardhi. Hiyo Tume itaangalia.

Tuone sasa environment and natural resources; mazingira na mali ya asili. Ulinzi wa mazingira; 239.1 “Kila mtu nchini Kenya ana wajibu wa kulinda na kuendeleza mazingira. Maafisa wote wa serikali wanao tekeleza uwezo au wanaotimiza majukumu yanayohusu usimamizi, ulinzi au matumizi ya ardhi au mali ya asili wataheshimu kanuni zifuatazo za maendeleo endelevi na mnaweza kusoma hiyo mpaka au mpaka isomwe?”

**Audience:** Tutasoma.

**Mr. Owade:** Hiyo mtasoma, but the point I wanted to make is on article 240, on article there is a new Commission again; the National Environment Management Commission and the point I wanted to make here is that the environment and natural resources have been abused in this Country and it is high time we put very strict measures to control, reserve and manage the environment in an efficient way. The New Constitution is saying you the people of Kenya you now have the power to sue in a court of law any person abusing the environment because the environment has to be protected.

If you have got problems of money, already we have given you the new positions of the public defender; mtaenda kwake na hiyo maneno iende kortini and you have a right as a community to decide the destiny of your environment. Nobody should come and abuse it and even if somebody is putting a project here, the new Constitution is saying he has to consult the people in that community and let the rivers be protected and people be protected. Wale ambao kazi yao ni kukata miti ovyo ovyo, na hata hawapandi mingine, sasa sheria inasema itachukua hatua kali hapa pengine tutatumia ile police force. Tunataka sana tulinde mazingira; iwe maneno ya dhahabu ama nini, minerals, rivers, all these things to do with the environment, you are called upon to protect and defend them.

Then let us see now the same page 29 on public finance and revenue management. I would like just to read some sections but what it is talking about, wananchi pia popote tulipotembea walilalamika sana kuhusu matumizi ya pesa. Maneno ya revenue , kwa sababu mnajua hata tukiongea hii maneno ya village ama locational council, kama hawatunii pesa kwa njia ile sawa sawa, je zitakuwa zina-make sense kweli?

**Audience:** No.

**Mr. Owade:** Hazita-make na pesa ndio zinaleta maendeleo kwa hivyo pesa si tu kwa serikali lakini pia ni kwa ile binafsi, hata kwa biashara, ile group tulionayo ya kina mama na kina wazee, lazima tutumie pesa kwa ile njia mzuri na maneno ya revenue management, maneno ya public finance ni lazima tu-streamline kwa njia ile sawa sawa kwa sababu kwa sababu tunawapa wananchi huduma kwa ile kazi yoyote tunafanya. Kwa hivyo hiyo section ina-deal na maneno ya matumizi ya pesa; right and good revenue management na nitasoma hapo (b) inasema hivi “enhance the participation of people, communities and civil society organizations in public finance management. Your participation is called for.

(c) Ensure equitable sharing of national and local resources through out the republic taking into account the special provisions for marginalized areas. Lazima tu-consider marginalized areas na kwa Katiba mpya tunasema hiyo maneno ya rasilimali, iwe ile ya kitaifa ama hizi ya local, lazima tutumie kwa ile njia sawa kwa jamii yote ya jamhuri ya Kenya. Tuko pamoja?

**Audience:** Ndiyo.

Number (f) hapo nikisoma, ensure that the budget and budgetary allocations promote transparency, accountability and the effective financial management of the economy, debt and public sector. We are simply calling for financial discipline, financial management, which is accountable to all people of Kenya. Whatever political party in power, whatever President or Prime minister in power, the Constitution is saying let the funds be managed as per the accountability of Kenyans. Let Kenyans have a say in the equitable allocation of resources.

Having said that, I want now to take you to page 3, article 254 on the Central Bank of Kenya and you can read on your own as you can now see that the Constitution has recognized it as a very special institution but I want to take you to page 31 article 254; the Auditor General.

Kila saa mnasikia the auditor general ata-release report yake na atasema nani ametumia pesa kwa njia mbaya. Hiyo ni kweli? Lakini nani ana-audit Auditor General? Ni nani? Hakuna mtu ana-audit Auditor General. Kwa hii Katiba mpya tunasema in article 266, the accounts of the offices of the Controller of Budget and Auditor General shall be audited and reported on by an auditor appointed by the National Assembly na sasa yule mbunge wenu ata appoint independent auditor ambaye pia ata audit Auditor General. Are we together?

**Audience:** Yes.

**Mr. Owade:** Halafu hapo chini tuna hiyo inaitwa economic and social council na hiyo ita-deal na maslaha yenu wananchi kwa ile huduma. Having said all that, I want now to go to the last chapters as we finish and I want to take you to page 36 on the amendments of the Constitution and that is chapter 18.

Again as we were criss-crossing all the constituencies in the republic of Kenya, Kenyans were concerned ati pengine kuna haja ya hii Katiba kweli? Ati ikienda kwa Bunge yao ni kubadilisha tu. Hiyo ni kweli ama la? Sasa kuna haja? Amendments iko kila pahali so what we have decided to do is the following; Article 294.1 we have recommended the following “subject to the provisions of this Constitution, Parliament may exercise its power, amend by way of addition, variation or repeal any provision of this Constitution in accordance to the procedure laid down in this article.

2. An amendment of this Constitution may be initiated only by the introduction of a Bill for the purposes in either House of Parliament and when the Bill passes its second and third reading in each house by not less than two thirds majority of the total membership of that House, it shall be presented to the President who shall give his assent to the Bill and therefore the Constitution shall become amended in accordance to terms of the state.
3. An amendment that seeks to make any change in (a) the territory of Kenya as set out in article 7.1 and described in the first schedule of the Constitution

(b) The sovereignty of the people

(c) The principles and the values of the Republic as set in 6.2 of the Constitution

(d) The Bill of Rights

(e) The structure; values and principles of devolution as set out in chapter 10 of the Constitution.

(f) Citizenship

(g) The provisions of this article shall also require ratification by the people in a referendum before the Bill making provision for such amendment is presented to the President for assent.”

In other words, I am saying Parliament will amend any other law in the Constitution by introduction of a Bill by each of the Houses but at each of the Houses, it must pass through the second and the third reading; those leaders at the district who are not Parliamentarians will also have a say once it has come to that National Assembly. It will go to them then they will discuss it then if it passes by two thirds, then that law will be amended but in 3, even if those two Parliaments meet, this number three is just impossible. In the Constitution they cannot amend this provision under clause three; the people of Kenya must be involved through a referendum and it is only the people of Kenya who shall amend.

So what are these provisions? (a) Anything to do with the territory of Kenya, the two Parliaments cannot amend, it must involve the people of Kenya.

(b) Anything to do with the sovereignty of the people, remember I talked about sovereignty in the beginning chapter, Parliament cannot amend.

(c) Anything to do with principles and values of the Republic, Parliament cannot amend

(d) Anything to do with the Bill of rights, the two Parliaments cannot amend

(e) Anything to do with the values and principles of devolution, as stated out in chapter 10, ile maneno ya village Council, Locational, district Council, Bunge, hata kama ni hizo Bunge mbili, hawana power, hawana uwezo hata kidogo kuendelea hivi na hawawezi kupitisha kwa Bunge ili hizo units zifunjwe. Tuko pamoja?

**Audience:** Ndiyo.

**Mr. Owade:** Anything to do with uraia, Parliament has got no voice to say, the two Houses, the people of Kenya must be involved so that is what it all means so you can see how tough it is this time to amend the Constitution. Are we together?

I want now to take you to page 37 chapter 20, we are almost through; Transitional and consequential provisions. If you look at the first schedule, what it deals with, I need not to read all that. What it deals with as a republic, as a territory, we need to know the limits of our border. We need to understand where does it start and where does it end so tuko na mpaka. For example Kenya na Uganda, lazima tujue huu mpaka inaisha wapi. So hiyo schedule ina-cover Kenya na Uganda in terms of boundary.

Ukiangalia page 39, Kenya Sudan International Boundary pia iko hapo. The same time, Kenya and Ethiopia international boundary iko hapo na the same page the Kenya Somalia Boundary iko hapo.

The economic Zone boundary, kwa mfano, bahari, kama ile bahari yetu ya Indian Ocean; tujue imeanza wapi na imefika wapi. Hiyo ni kweli ama hapana?

**Audience:** Ni kweli.

**Mr. Owade:** Yes. Kwa hivyo lazima kwa Constitution tujue hiyo bahari iko mpaka wapi. As you turn to page 40; as you can see there, Kenya- Tanzania International Boundary. It also maintains the limitation with our Tanzanian brothers.

I want now to take you page 41, the second schedule; Katika hii Katiba tuko na list ya Provinces na ningependa msome ili mjue kama mko ndani ya hizi Provinces katika Jamhuri ya Kenya. Right? So, nitasoma: Nairobi, Central, Eastern, North Eastern, Coast, Western, Nyanza na Rift Valley. Mko ndani?

**Audience:** Ndiyo.

**Mr. Owade:** Kwa hivyo hizo Provinces zita-remain vile ziko. Tunapendekeza ya kwa kwa Rift Valley Province, hizi districts zitakuwa; Baringo, Keiyo, Uasin Gishu, Nandi, Marakwet, Transzoia, Turkana, Samburu, West Pokot, Buret, Kericho, Laikipia, Nakuru, Koibatek, Bomet, Transmara, Narok na Kajiado. Mko?

**Audience:** Tuko.

**Mr. Owade:** Kwa hivyo mko ndani ya Katiba.

**Audience:** (Laughter)

**Mr. Owade:** Then we go to page 42; National Symbols, I think I had handled that before. The National Symbols ama Alama

za Kitaifa; that one I already talked about. We have the fourth schedule there, in page 42; National Oaths and Affirmations. In this schedule, it means that each public leader, be it the President, the Local Council, Prime Minister, watakuwa na ile tunaita kiapo. Kiapo ambayo lazima wapewe – Oaths or solemn affirmation of allegiance of the President, acting President and other leaders in that order. That one is also there as a sign of leadership and conduct.

I want now to take you to page 45, the sixth schedule; Action to be taken by Parliament. Some people have been wondering that in the new Constitution coming into place, are we therefore saying that hii Katiba ya sasa is useless? No. Hii Katiba ya sasa ni muhimu sana and in order for us to go to the new Constitution, we need a smooth transition. Are we together?

**Audience:** Yes.

**Mr. Owade:** We need a smooth transition from the current Constitution to the new Constitution. So what it means therefore is that the current Constitution will continue to be in place until the new Constitution completely takes root. Are we together?

Because if we say, kuanzia leo hawa watu wataona, hiyo sheria hakuna, kuanzia kesho tutaanza na hiyo sheria mpya; hiyo hapana kwani tukifanya hivyo hatutakuwa kwa serikali. Mmekubali?

**Audience:** Ndiyo.

**Mr. Owade:** Kwa hivyo lazima Katiba hii mpya iwe hadi tuwe na Katiba Mpya sawa sawa. So what the sixth schedule is saying, ina set up a time limit for Parliament to work out on the new Constitution so Parliament must have addressed a particular issue within a particular given time in order for us to have a smooth transition of the new Constitution. Are we together? So ukiangalia kwa hiyo schedule, inasema hivi, up there, the first column. In the first column we have got various provisions in the Constitution.

In the second we have the articles; zile articles tulikuwa tunasoma, kwa mfano tukisoma hapo; Citizenship by naturalization, that is Article 21. Are we there? Sasa uki-refer to Article 21 utaona inahusu citizenship by naturalization. Halafu hapo third column kuna hiyo time limit within which action can be taken and I want to make a correction on that column where it is written no time limit, andika three (3) years. Right? So in other words what we are saying is that Parliament shall have a specific period during which they must have implemented that provision to come into law. Are we together? So if it is, for example, Status and government of Nairobi, that is Article 8.2; it means that Parliament will take three years in order to implement it into the new Constitution. Are you okay?

**Audience:** Yes.

**Mr. Owade:** So that simply defines what Parliament must do. So even the Constitution gives Parliament or conditions

Parliament that it must act within a specific period so that the new Constitution comes into force. So, meanwhile as we go into the new Constitution, we need a smooth transition and that is why the current Constitution must lead us into the new Constitution.

I want now to take you to page 46. In page 46, we have the seventh schedule; powers of National and District governments. As I was talking about devolution or various structures of government, some people were wondering does it mean therefore that the National government no longer exists? Some people were wondering what the functions of the National government will be and what the functions of the District government will be. I want to make a special announcement now that the Constitution of Kenya Review Commission, what they have given you here as far as structures are concerned; Local Council, Village Council and all the rest is just a framework to make you people of Kenya have an overview of what it should look like. At the moment there is a special task force of Commissioners who are dealing with how power should relate within districts, functions, specific duties and sharing assets between them. So what you have given you here in the draft is just a framework so that you Kenyans may have a picture of what this kind of government will look like. Are we together?

**Audience:** Yes.

**Mr. Owade:** So here we have just given you a proposal and it is upon you Kenyans to reject it, to amend it, to modify it or to approve it because it is a draft that is based on your views. So National government list; ukisoma article number 122, there are various duties, which the National government will do. I don't have to read that, you can read on your own. Are we together?

**Audience:** Yes.

**Mr. Owade:** When we come to list two, District government list, this a very powerful body and some people might also be wondering because as we were going round collecting views from Kenyans, some people were saying no, it is time for Majimbo and that let the Regional government, the Provinces, be given authority and power to exercise their power, to exercise leadership, to manage resources in an equitable way. So we need the Provinces to be a powerful unit of the Local government.

Some people were for Majimbo or federalism but some people were also saying no, there should be nothing like Majimbo, that we maintain the centralized system of government, the unitary system whereby the seat of the unitary system remains in Nairobi and therefore we shall distribute and harmonize because what we need in this country is unity and stability. So everybody was supporting his side.

What the Constituion Review Commission of Kenya has come up with is what we call a middle ground. If you look at those structures of the Local Council, the Village Council or whatever, there is a middle ground but we have given the Dstrict more power and you realize, somebody might wondering, the provincial council seems not to be represented at the National Council.

That is true. The Provincial Council is constituted by District Councils within that Province. What we have in the Provincial Council is more or less a coordinating role but even the person heading the Provincial Council will have to dance to the tune of the District Council. District Councils will constitute the Provincial Council but the overall head of the Provincial Council will be

a coordinator because as you realize, you have got assets as a Province. Isn't it?

**Audience:** Yes.

**Mr. Owade:** For example, which ones do you have in Nakuru, Provincial Hospital. Isn't it? It belongs to the people in this province. Therefore we need a structure, which we call the Provincial Council which will monitor sharing of resources, sharing assets, sharing investments and to look whether these resources are shared equitably between all the districts but it is you the District Councils, who make decisions at the Provincial level, who will decide and determine how it should be. So what we are saying is that at the Provincial level it is more or less a coordinating function. Are we together?

**Audience:** Yes.

**Mr. Owade:** If you read the District government list, you will see various functions you have; like the local taxes, education services, nursery, primary, civic education, medical and health services, water services, road services, market and trading centers, provision of health services, district planning, district statistical services, district identification, agriculture, land, trade, trade licenses, cooperative development, labour matters, human resource management, probation and welfare, community development; there are so many and you can read and you will see the powers which a District government will have. Are we together?

Then we also the concurrent list there. The eighth schedule, which I believe is the last schedule, still on transitional and consequential provisions. I have already talked about them and I want to highlight very briefly that we need a smooth transition from the current Constitution to the new Constitution. Are we together? So that when you talk of existing offices, it is not that the chief is going to surrender his office immediately, no. There has to be a smooth transition. That action we are talking of to be taken by Parliament has to take its course. Once it has been fully implemented, therefore the new Constitution will now come in. Are we together? Otherwise we will be creating anarchy. I want to repeat again on the provincial administration that the Chief, the Sub-chief, the DO, the District Commissioner and the Provincial Commissioner; they shall maintain their positions in the public service. Nobody is relieving them of their duties but the Constitution is giving the public service commission power and instruction, that they have to get a meaningful job for the benefit of their own welfare and the benefit of their dependants and even for the benefit of the people of Kenya. We are not saying we are firing the provincial administration, they have a crucial role to play but let the Public Service Commission be their employer and they must give them a job and must define what they would do. That is what I wanted to say about the provincial administration.

I think you will allow me to stop there. Thank you.

**Audience:** (Applause)

**Paul Tuikong:** Thank you Mr. Owade and thank a second time. That was a very good speech. I am now going to open up for the members of the public to respond and give their side of the draft. We are encouraging that you come forward here and say your name and then give your views and eventually sign with us to say that you have given us your views. For the purposes of recording you will give us your name.

In the next thirty minutes or so, or may be twenty, we are going to take maybe eight to ten views from the members of the public. Give us your views and the recommendations that you want to be put in. We began by saying this is a draft and we are still with you so that you give us your views and what you want to be done. Mr. Sambu you will be the first. I am encouraging the delegates to hold on. Let us have the first in that order and from there I will collect the second bunch of presentations of views.

**Joseph Sambu:** Asante sana Bwana Chairman. Bwana Mwenyekiti katika mkutano huu, jina langu ninaitwa bwana Joseph arap Sambu kutoka sehemu za Mumberes katika Eldama Ravine constituency. Hasa ninatoka kijiji kinaitwa Equator. Bwana Mwenyekiti, ingawa hatujaendelea sana kusoma hii kitu, wakati ulipokuwa ukitu-brief, nimekuwa na mawazo mengine kidogo kuhusu yale yote yaliyo kwenye hii draft.

Kwanza ni upande wa Preamble au utangulizi. Ninaona ya kwamba hiyo Preamble ni sawa lakini wakati mwingine tulipokuwa tukiambiwa haya mambo na Bwana Mosonik, alitambua ya kwamba kama mapendekezo yako isipochukuliwa na unaona kama ni sawa, you can raise it so I wanted to raise an issue on this Preamble. Ninafikiri, Bwana Mwenyekiti, katika draft ile nilipea Commission, niko na Preamble sasa na sijui kama ni sawa au si sawa.

Jambo lingine, Bwana Mwenyekiti, ninaona ya kwamba hapo kuna Article 14 clause 12, sijui kama utaweza kutusomea. Tukisoma hiyo na Article 35 clause 1, inaonekana kuna contradiction kidogo. Sasa mimi ninaona ni kama it is contradicting the other one. Hii ina keep powers na ile ingine inasema equality. Kwa hivyo inaonekana katika haya mapendekezo ya Constitution, inaonekana wale ambao walitoa haya mapendekezo walipendelea wakina mama zaidi kwa sababu hapo mtu akichaguliwa, lazima mama achaguliwe specially. Kule kwa Bunge, theluthi tatu ya Members ni akina mama. So, inaonekana pengine our Parliament can be composed of women kwa sababu hata women wanaweza kuchaguliwa kule kwa constituency lakini kuna hiyo provision ya one third. Hapo ninaonelea pengine ingeangaliwa.

Katika hii ya Provinces, inasemekana kwa district watu wawili wanaenda province na mmoja lazima awe mama. Katika province, wawili wanaenda national na mmoja lazima awe mama na hawa ni watu ambao wanachaguliwa. Sasa inaonekana pengine wamama wote wawili wanaweza kuchaguliwa. Si ni namna hivyo?

Kitu nilikuwa ninataka kusema hapa ni wording. Pengine isemekane isemekane two who must be of opposite sex. Kamqa mama amechaguliwa kwa watu wote, yule wa kuteuliwa awe ni mzee au a man. Muangalie hapo.

**Paul Tuikong:** Ningeomba tafadhali tuheshimiane kidogo. Let us respect each other by giving two minutes halafu mwingine apate nafasi.

**Job Kandie:** My name is job Kandie. Bwana Mwenyekiti, yangu yako kwa Chapter 5, Article 32.2 na hii ni kuhusu penalty ya kwamba katika draft ya the new Constitution, ni ya kwamba hakuna kifo kwa mtu yeyote ambaye amefanya makosa. Ikiwa mtu amewauwa watu sita, ati anaenda huku ale chakula na wale wamefunikwa, wako kaburini. Kwa hivyo, hata tukienda, sheria ambazo zilikuwa za kwanza ni za Babylon. The lawgiver alitengeneza sheria mia mbili themanini na mbili. Mtu akiling'oa jicho lako, ling'olewe, akilikata kidole chako, chake kikatwe. Kwa hivyo ninaonelea ya kwamba hiyo irekebishwe kabisa. Watu watafanya makosa wakijua ya kwamba wataenda kuishi huko kufanyia kazi serikali. Makosa ni makosa na kama amewauwa watu, auliwe.

Jambo lingine bwana mwenyekiti linahusu marriage, haki ya bibi na bwana. Kwa hivyo, kama wakikosana wanaenda kortini, wanafanya divorce na ni ya kwamba tukifuata hii review kwamba watagawanya mali ambazo walikuwa wamezipata, lakini mimi nikifukuza wangu tunagawanya ng'ombe, tunagawanya kila kitu. Anaenda kwa bwana mwingine anagawanya, si bibi atakuwa millionaire, atajitafutia pesa kwa mabwana. Mimi ninaonelea hivi, Bwana Mwenyekiti, lazima makosa inatokea wasi; pengine anaweza wacha ili apate mali kwa mwingine.

Katika utamaduni ni ya kwamba, ukikaa na bibi na pengine hawakujaliwa kuwa na watoto, aende kwa bwana mwingine ajaribu bahati yake, hata mimi niende kwingine nijaribu bahati yangu kwani tunawezaje kukawana mali na haikuwa makosa yetu. Kwa hivyo hiyo irekebishwe bwana mwenyekiti.

**Audience:** (Applause)

**Job Kandie:** Na kitu kingine, Bwana Mwenyekiti ni kuhusu levels of government kutoka mashinani yaani village mpaka province. Hiyo ni mzuri lakini kuna sehemu ambapo ningependa kujaribu kuchangia. Katika location, si ya kwamba tutawawacha Chiefs. Wachukue kazi ya Executive administrator in the Location kuliko kubuniwe kazi ambayo chief atasima na hatapata kazi ya kufanya. Awe Chief Administrator, Chief Executive wa location na hiyo itakuwa vizuri kwani atamonitor decisions za Councillor.

Jambo lingine Bwana Mwenyekiti ni ya kwamba, wale wanaoongoza ndio tunakubali wachaguliwe kupitia vote na kama tukisema la, wasiende tena kwani wanatumikia watu. Hata vile vile, Chief Executive wa district, ambaye ni DC, achaguliwe kwa kura vile tumesema lakini awe ni mzaliwa wa district hiyo. Anajua uchumi, sheria, utamaduni na mila za watu. Huwezi kumchukua Mmaasai awe DC wa Kilifi kwani watu wa Kilifi watakapokuwa wakisema maembe, maembe, atakuwa akisema ng'ombe, ng'ombe kwa sababu hana uchuzi.

Kwa hivyo akae kwa district yake na awe mzaliwa wa hapo. Tena, atakosa kuiba kwa sababu ni mtu wa nyumbani. Tumeshuhudia wakuu wa District ambao wanachanga pesa wakisema wanaenda kuchangia shule yake nyumbani, kumbe anaenda kuchenga nyumba ya tiles, si shule. Kwa hivyo awe Administrator.

Kwa sababu ni huru ya kwamba tunapewa conditions dakika mbili, nitaendelea kusema hivi; Bwana Mwenyekiti, kuna mahali sijui kuna Benki arobaini na mbili; Multi-national, national...Kwa kweli tunayo pesa na lazima tutengeneze pesa. Kama hii noti yangu ya hamsini, ni portrait ya Rais wetu na pengine kesho hataenda tena, of course he is retiring. Pengine atakuwa Mwai Kibaki, pengine ni Uhuru. Sasa tutabadilisha iwe Uhuru? Tena mara nyingine baada ya five years, election tena, Kibaki akichukua, tutabadisha iwe Kibaki? Kwa hivyo tunataka symbol moja. Ikiwa ni the founding father of this nation, yaani Kenyatta, iwe Kenyatta hata nani akija kuongoza. Tuwache vichwa vingi sana.

**Audience:** (Applause)

**Evans Kangwana:** My names are Evans Kangwana. I think I would like to appreciate so much for the amplification you have made. You will excuse me, the members of public, I will use English.

First, maybe what I can say is that I can say is that I appreciate and I buy this new draft. It has really represented and especially us the youth but I have some two places, they have been raised by the guys who have come here before me but I really think that the thirty women who are supposed to be in the National Council; the guarantee that there have to be thirty extra is very unfair because it leaves men with only one option, just to contest from the district level yet the women have two options; they can contest on the district level and they can also present their names on the other forums so I think that is very unfair. Maybe they can be limited to be maybe twenty women and ten men so that we can have an equal playing ground.

Then there is also an issue you said, Mr. Chairman Sir, that when a Prime Minister is relieved of his duties, the whole cabinet goes with him. I think that will be unfair to some people who are efficient. Maybe there is a particular minister who is so much efficient and he has really done good in a particular ministry. It will be very unfair for that guy to be sent packing; his efforts are wasted because of just an individual. I think that section needs some kind of amendment.

Then there was this issue that all political parties should submit ninety people for nomination. I was asking myself why should they submit ninety then they will only be expected to choose only from the percentage they have acquired from the people?

Then there is this issue that Mzee has made about the chiefs and their jobs. I am suggesting that these Chiefs and the current provincial administration and the District Officers. We are not going to bar them from the current positions they have but let them come from a competitive basis because we have Sub-Chiefs who are so bad and we cannot guarantee them a transfer of jobs to an administrator.

**Audience:** (Applause)

**Evans Kangwana:** So let them come but on a competitive basis where we will have the authority to elect them, to gauge them according to their performance and then we give them the jobs. Let them not be guaranteed of just swooping and coming with the old bunch; let only the good ones come and the bad ones can be sent packing.

Finally, I was wondering because you were saying that the election date be made every second Tuesday of August and I was asking myself, suppose we have the current impending elections held under a new Constitution, does it mean that the next term will be longer for the sitting MPs to accommodate it to be on August? I don't know what provision we have to bring that into force. Thank you so much.

**Audience:** (Applause)

**Paul Tuigong:** Put down your name and your signature.

**Ronald Mochache:** Thank you very much. My names are Ronald Mochache and I have about four issues to raise from what we have just gone through in the draft.

Ya kwanza is the issue of life in the Bill of Rights. The Bill of rights says that everybody has a right to life. I was wondering because the draft has failed to define what life is. I was thinking that, considering the immense powers women have been given, they might take even abortion to be a right. I would like this Constitution to define that even as immediately conception takes place, a man and woman cannot decide to... the pregnancy has a right to come to term. I am saying that everybody had a right to life but then we have failed to define what life is. We would have gone down and decided where life starts; is it when man is born or just before. I think it should be that life starts when conception takes place.

The second is the issue of the President and we said that age limit should be seventy. I am of the opinion that this should not be there. Let us have that anybody should be elected and should be in the office for two terms. Even if you are seventy, you are sane, you can control things, then you can lead the country, there is no problem.

The other issue is this on devolution of powers; we have said that we have a council at the village level, the locational and the district level. Now, I was wondering, do we need the Provincial Government? You have just said that their role will be just to coordinate. These people require funds and so let us avoid overusing the little resources that we have. We should avoid the Provincial Government and we go directly to the National Government.

The other thing that I wanted to mention is also the issue of a professional cabinet. Well, it is a good idea but I am of the

opinion that we give the Prime Minister and the President... If they want a professional cabinet, well and good because we have already told them that we need the Permanent Secretaries; these Permanent Secretaries will be technocrats na watajitajika kujua kile ambacho wanatakikana kufanya; they must have a profession. Why should we add another technocrat on top of him? Don't you think that we will bring confusion? Let us leave the Prime Minister and the President to come up and tell us they want a professional cabinet or they want a political one. I think this issue of a professional cabinet should be considered. Thank you very much, those are the issues that I wanted to raise.

**Paul Tuikong:** I think number five was across this side and if number five has forgotten we will go to six. Dinah was number six.

**Dinah Talam:** Good afternoon everybody? I am Dinah Talam from the Maendeleo ya Wanawake Organization. I would like to thank the chair of the session for his full and clear presentation. I just have a few views here to comment on.

The first one is on languages and that is Chapter 2 clause 9.1 "the official languages of the state is English and Kiswahili." With that, I feel there should be a quote that there are some documents that can be presented in vernacular; like the Constitutional Review and other laws which affect all citizens. That will be in conformity with our Preamble where we are recognizing all languages in this country.

In Chapter 36, on all the members of the society, in reference to 57 – health, I feel there should be a clause for our elder members of the society, which should even quote the age that they should have access to free treatment and medical care because at that age you find that the majority cannot even afford Panadol, which are painkillers.

On the clause on women, that is 109, the section that says they should make one third of each house. I am kind of trying to request my fellow constituents to put this into consideration. Look at the resources your women have. Do they have the resources to go and campaign like the men? Look at the education your women have. Do they have enough education? Look at the cultural barriers; when I stand of you, you look at me as a woman but not your daughter. Look at the biological barriers a woman has. I cannot come to the public when I am nine months pregnant. How do you expect me to move forward and fight with you men? You are being very unfair to your mothers. Consider women as your mothers and your children and not your wives. When a man hears of a woman, they just think of that wife of his in the house.

The other perspective is the National Council. I thank the Constitutional Review drafters for bringing the National Council right from the local level to the national level to a one to one ratio. The population of women in this country is higher than that of the men. For your information, the population of women and men in Koibatek is almost one to one. Why are you burying the women? They do not make decisions? They are the ones who mould up children until we are big enough and you say these are the women who cannot talk for our country?

I am not only comfortable with the National Council. At the Sub-locational level you have not put in place the women; how many women will be there. As a matter of fact, in this country, if not placed, there will be no women representation. Thank you.

**Audience:** (Applause)

**Jonathan Lagat:** Thank you very much. Jina langu ni Jonathan Lagat, the youth leader in the district. I must say that this is a momentum time for us, especially those who are youth in this country because this is the only time that the Constitution is being reviewed. Maybe the next time it shall be reviewed we shall be past tense in this country.

I thank you for including something on the youth; that they will be elected or rather nominated to Parliament. I would add and say; it should be upheld in the Constitution the creation of a Ministry of Youth Affairs in this country because the youth have got a lot to offer in terms of development and maybe in that development, there should be a plan to start building of good facilities or sporting facilities for the youth so that maybe in 2020, we shall be able to host the world cup in this country.

When we come to what we have read, that is on the Office of the Vice President and the election for the Vice President is that he is going to be the running mate of the President or whoever is vying for the President's seat. I think he should come from the same party with the person vying for the Presidency and not a coalition or maybe another party. He should come from the same party because a situation may arise where two parties are trying to marry for convenience or trying to merge before the election and then after the election we shall have chaos when they do not seem to agree. So, let them come from the same party. I feel, in the Constitution, there should be a situation where there are few parties and not many parties coming together and then after the election, they disagree because of trying to bargain for seats.

Thirdly, the Constitution says that the ministers are elected or are appointed by the President having been advised by the Prime Minister. I don't know what will happen if the President does not accept the names of those he has been given by the Prime Minister. I think the Ministers should actually be Members of Parliament but there should be those specifications given to the President that he should elect from those who are qualified so that those who are actually appointed to be Ministers have been Members of Parliament but they qualified. If you elect other people from other quarters, it may not auger well, in my opinion.

As for the gender issue, it seems as if a situation is being created where men are discriminating against women. I do not think so but it is only that women have not come up to take their rightful place in the affairs of the society and that is why it must be emphasised by saying thirty percent should be for women. As to the extent that men now are on the receiving end of this discrimination so men may end up being discriminated against by saying thirty percent. For if we have, let us say, seventy of those elected. Suppose half of them are women, the other thirty again being women, so you might have a situation where the men will be few. Maybe you can amend and say instead of having seventy, have one man and one woman so that they both will

be there. There is no problem with all of them being one to one.

Lastly, I want to talk about the years of the President. In my opinion... (flow broken cos of end of side A of tape) When he left office Americans were saying that he should continue so in my opinion, it is what the person can offer but not what his age is.

As regards the Commission, I think it is a very timely time to have the Teachers Service Commission being independent so that it looks into teachers' issues independently without having their hands tied by many factors. While on education, I suggest that teaching, being an essential service in this country, be really listed as a profession where... In every profession, like in the profession doctors, we know that in the profession of a doctor, his client is a patient. So, also, teachers must be listed as professionals whose client is well known so that we know is the teachers' client a child, is it a councilor or who is the teacher's client? So that they work very well knowing that those are their clients and that there is a teacher's profession in the country, like the one we have in the medical profession.

Last but not least, in my opinion, I think too much has been contributed in Parliament to the extent that Parliament will have a lot of responsibilities. I don't know, but we might have a situation where we were having Parliament sitting down and increasing their salaries. I don't know whether there will be checks and balances for Parliament because it seems everything is being referred to Parliament. Thank you very much.

**Paul Tuikong:** I will give to Mr. Owade to respond before I take the next.

**Mr. Owade:** Thank you very much for your questions and comments but I think we are just taking your opinions; we are not engaging in a debate, this is not a debating forum. So, whatever the people of Eldama Ravine said, that is what we are going to forward. Is that okay? But just maybe a small clarification on the Preamble, Bwana Joseph Sambu, I already have it here and we will take it there to consider again. Your fear for women representation, that is your opinion and we respect it.

Bwana Job Kandie, on death penalty, your position that it should be maintained, we respect it but I would also to remind you that Mzee Jomo Kenyatta never signed for any death penalty except they were talking about somebody Njenga somebody and then President Moi only did it for the coup blotters in 1982. Since then, nobody has been condemned for that, normally it is just life imprisonment but again that is your opinion be assured we will let it up. You raised something on marriage and property shairing in regard to women. We have also absorbed that. On devolution, the Chief doing some functions due to the district leve, I had hinted that perhaps those could be some of the duties they may do but again we are saying the role belongs to the Public Service Commission and Parliament. Ours as Constitution is just to give a framework on that. Right?

Somebody suggested on kichwa ya President; this has been an issue all the way from all the way from Bondo, Alego Usonga, where I was last week and I think it is gaining a lot of impact and we shall take account of that.

Evans Kangwana, you have fears about women and we have taken note of that. The idea that the whole cabinet goes with the Prime Minister is not logical because some cabinet can be very good and efficient so why blame the whole group? We have taken note of that. Then you did not understand about the ninety people and I would just like to remind you that the Constitution is entrenching the Electoral Commission and giving it a lot of tools and there are very strict conditions which I would like to read thoroughly, which it is giving to political parties concerning the nomination of the ninety. However we have taken note of your fears and views. You asked about the role of the Provincial Administration; as I said and I it is the stand of the Commission; it is a coordinating body. District Councils shall constitute the Provincial Councils but the Provincial Council will be an Executive to monitor the sharing of resources, decisions and relations between the districts, their functions and duties. So, it is just like a pool where they converge but more power reside with the district.

Somebody asked on the elections and this one is a very tricky issue and I beg not to answer it now. What I would just say is that we are praying for a smooth transition and we are praying that everything moves well so let the new Constitution take its course in whatever manner the forces that be decide it to be. Right? I will leave it there.

Then Ronald Mochache you asked about the Bill of rights, where does life start? I knew where you were hitting the bells, only that you did not want to hit it straight. I take your concern, this can be debated and we shall submit it. Your concern about the age limit of the President, we have taken into account. On the cabinet, I already have highlighted that and I don't need to repeat that.

Dinah Talam, you gave a very good mandate on behalf of women, you gave a strong concern on the older members of the society. Already there is a clause dealing with that but again Constitution cannot write everything. Parliament will now go to the details of implementing this. On the National Council, you appreciated our role on that and that is fine.

Jonathan Lagat; creation of a Ministry of Youth Affairs – again we shall leave it to Parliament but we can also recommend it just as recommended. Then for a plan to start building sporting facilities; that one can be done. The office of the Vice President, that both of them should come from the same party, we have taken that but remember that once they become National Leaders, they do not become members of political parties. It was our proposal that we delink them from that. The need for fewer parties is going to be very possible. If we put this constitution to place we shall end up with only three parties because the conditions are very tough. Ministers appointed by the Prime Minister, if the President does not accept then what happens? He has got no choice because Parliament has got authority to compel him to do so and if he does not do so then he will be contravening the Constitution. On job description for Ministers, we have taken that into account. On gender; your fears that a situation is being created whereby men are seen to be discriminating women, that women have not taken their role assertively, I believe we saw Mama their and already she has started showing the need but those were also your concerns, which I shall submit. On the age of seventy, we have taken note of that. Thank you for appreciating the role of the Teachers Service Commission. On the fears that we are giving Parliament too much power, we would say that yes, we are promoting a lot of

Parliamentary democracy against other organs but the view is that this is the cry of Kenyans that Parliament which is the representative of the people should scrutinize things which are going on to improve efficiency in the management of public affairs. That is the only thing I say but that again is your view, we respect it and we shall submit that.

Thank you.

**Paul Tuikong:** Let us follow the order that I have given out and please let us be a bit brief and we go to the point.

**Mr. Kipsirgot:** Thank you very much. I will be free na nitatumia Kiswahili ili niende haraka. Yangu nitaenda kwa third schedule ambayo ni page 42, ambayo inaonekana kwamba haijaguswa kabisa. Hii ni sehemu ambayo imeandikwa national flag. Kwamba mimi nilipeana proposal na iko hapa na tutaona baadaye ya kwamba National flag ya Kenya inaonyesha red colour ambayo iko na juu na katika hapo kuna ngao na mikuki miwili, tena kuna colour ya black, na hii si ya watu black pekee yao ni ya watu wa Kenya kwa jumla. Hii red colour inaonyesha kifo na vitu kama hivyo na hivyo vitu vilivyo katikati hapo ni vya vita na tungependelea vitolewe.

**Speaker:** Your name for record?

Mr. Kipsirgot: My name is Mr. Kipsirgot. Ningependekeza colour moja green, hapo katikati kuwe na stars nane na katikati kuwe na star moja. Hizo ni provinces nane ambazo zimekuwa recognized katika Constitution. I don't think that will take us long.

Tukienda katika sehemu ya public seal, inaonekana pia nayo ina ngao mbili, Simba wawili ambao wanapigana na katikati hapo kuna Jogoo ambaye ameshika shoka. Hivyo vyote ni vitu vya vita na juzi katika 1992, tribal clashes, hivi ni vitu ambavyo vilitumika kuwauwa watu wengi sana. Hivyo vitu vitolewe na hapo katikati tuweke Mount Kenya, ambayo tunatoa jina letu katika Mount Kenya, Ostriches wawili, wanyama ambao si wa vita, ambao katika Kikuyu wanasema Mt. Kirinyaga, the mountain of Ostriches. Katikati hapo kuwe na the sun rising na ninafikiri vita vitaisha katika Kenya hii.

**Audience:** (Laughter)

**Mr. Kipsirgot:** Asante sana. Katika miongo haya mengine, tumeambiwa ya kwamba everybody amepewa haki yake na katika sehemu ya seventy years, mtu akifika seventy years, you cannot become a President of Kenya. Is there freedom there? Can the age limit be left open? If you are ninety years and you are able to rule, let you be the President.

Recalling of Parliament: Inasemekana kwamba you can recall your MP if you only get thirty percent of the signatures. If today I win and I know my opponents got about 50% votes, he is readily able to get thirty per cent of the signatures and there will be coups and coups. Let that be removed and maybe through a referendum whereby people will vote and if it is the highest, then

we recall.

Provincial Administration and women: There is too much power for the women and now we are crying men. There could be an issue whereby the seventy of them could be women and then you come and nominate another ninety, then everybody will be women there.

Age limit for the Chief Justice and the Judges; they say seventy-four and that is too high. Why are we leaving engineers? Engineers are going for retirement at fifty-five. When it comes to a Judge, what is important that they will require seventy-four?

Ministers: We have got Ministers with the limit fifteen, can't we have at least not more than twenty? Fifteen are very few. How many Ministries do we have now? Thirty. How many Ministers do we have now? They are above thirty. And then there are Ministers and deputy Ministers and Prime Minister and Deputy Prime Ministers, there is a President and there is no Deputy President, we have a Vice-President and so that Vice will be useless. So, can it be a Deputy President?

The High Court Kadhi: The Muslims have been given the power to have a High Court. Now, you know the rules of Muslims are able to sentence somebody got in illegal sex, someone gets buried while standing to the head and the Constitution is saying there is no difference. How are we going to do it if the High Court and Chief Kadhi are able to profer their laws? They will actually seal the sentence.

Thank you very much, that is my contribution.

**Cllr. Chemitei:** I am Councilor Chemitei. Thank you very much. The Constitution draft has been elaborated so much and we have understood.

I would like to touch on the issue of Provincial Administration. This issue was there from the beginning and it was done by the colonial government and it has met a wrath to us Africans since that time. Even up to this time, the Provincial Administration has been exercising the rigging system in elections and other suppressions to the blacks and so we do not need it any more. Let it just go like that.

**Audience:** (Applause)

Cllr. Chemitei: Don't find for them a way. We are not getting rid of them, they are going by themselves.

There are is this issue of land; when we get into it we can see still there is a Commission that has been brought up and it will bring the same way the Commissioner of lands has been doing. They cause all these land grabbing from that end of Nairobi and this Commission will still hold such issues, the titles and so on.

The other time we had talked of the local authorities being empowered to hold the trust of wananchi and so it is still that way; the local authority will assist their people because we have seen that up to the village we have the village local authority and they will take that system. So, let us abolish this issue of the Commission being based in Nairobi and they hold the trust of people's things.

Thank you very much, that is the much I had.

**Speaker:** I am -----? and I thank the chair for whatever he has done and ningetaka kumwambia the first time you came, we were not able to understand the Constitution and now we have been able to better see the Constitution as if it is something we already knew because it is now back home to us and we understand it. All the same, it ought to be written in the language that our parents understand most.

I have two things mainly. We have talked about the National Assembly and said there are going to be ninety people who will be nominated and we also have 210 that will be elected. Now, it looks like these ninety nominated members will come from parties. Why are we so interested in parties that sometime may not have people? Why don't we have people being elected throughout to go to Parliament? Either in the upper House or the lower House, all the people have to campaign and have to show that they are capable of leading and not just be nominated. Why are we nominating people?

**Audience:** (Applause)

**Speaker:** We are increasing the nominees; we had twelve and hence now we are going to ninety. That means there are people who are afraid that at one time they must be chucked out so they want these people and because Kenya we are used to --- where proxys are always used so that if you have a relative who has been elected to the National Assembly, then that person will clear your nomination. I think that one is not right. Let us have all people contesting for those seats.

Now, because some people will be nominated and others will be elected and they will be very many, what will happen to our Gross Domestic Product? We are right now going to negative 2 from 5 where we started when we got our independence. So, are we not going to be poorer if people will go to the National Assembly and they agitate for their salaries to go to four hundred thousand? I am thinking that these people should actually contest for their seats and we should not have sympathies for them.

I was also thinking that this Constitutional Review has taken a lot of money, it has taken a lot of resources, in terms of people talking and in terms of movement from one place to another one. We were thinking that this Constitutional Review should hold on until when we are going to the next election, we are using it because there is a chance that this new President might not accept to loose power and therefore will continue and from the way the draft is done is that upto August is when we are going

to have our new President under the new Constitution. Therefore we are not giving fair chance to use it right now and we have used a lot of money, we are right now very poor, our teachers don't even and the country is just becoming illiterate.

**Audience:** (Applause)

**Speaker:** I am thinking about the Provincial Administration where we have said Chiefs have been very unfair. It has been said that they are the ones who have been rigging in and out people but let us go back to this idea of us having local councils being chosen. In our traditions, because we have said we are going to uphold our culture, we have clans. Now, when you have a clan, that means members of the same clan might be members of the local council and when they become members of the local council, they become biased when they are listening to cases. So, I was thinking of these people called the Provincial Administration to be given tight rules, a tight code of conduct so that they become fair. So far they have been fair because they even have been arresting criminals but these local councils are able to come from one reach, which I call clanism and *Oret*. It will make those people become so powerful, they are the ones who are going to have people in the district council, they are the ones who will also foresee the National assembly and therefore I was thinking that the Provincial Administration be given because the way the draft is talking, they are going to be re-deployed, taken back to be clerks, those people will not be holding any position and because we have said it is a universal surface where people will say we do not want you now. So, we want these Provincial administration people to continue being there.

We have also talked about the provinces being reduced. Actually they are not there. If you see, they are only there in name but in activities they are not there. Now, this Constitution that we are forming is almost like the first Constitution, which was called McCriots Constitution. It was started at the second Lancaster Conference and that Constitution was a Majimbo Constitution and from where we are talking about right now, we are not only saying ---- a Constitution which is called Majimbo but I am seeing as if it is a Majimbo. What we are seeing is that if it is not Majimbo and if we are talking of devolution of power being held somewhere, it is so tentative, whatever our target is not very strong, it is very tentative.

What about the assets that we have in our provincial headquarters? What will happen because those assets will belong to that district which has the assets? For example, in our Rift Valley, we have Nakuru District having all the assets of the province. So, I was thinking of asking the Constitution makers to see that those assets are reduced and they are taken to various districts within one province so that it becomes equal distribution of resources.

Let me talk about women and this is the last one.

**Audience:** (Laughter)

**Speaker:** Let us have thirty women going because we are soon to make a mistake and I want the next round, very many women to come here and defend this one because this is an indicator that even in Nakuru, in Bomet, in Kericho, everywhere,

where the same people are having the same cultural feeling, this point is being refused and it stepped down properly. So, can we say let the thirty women go but I don't want them to be nominated; I want them to contest for the seats, I want them to...

**Audience:** (Applause)

**Speaker:** So that when we have our area Member of Parliament going to contest, we also have women going out so that we shall have three papers; we have one for women, one for the men and the other for... no, we don't even want the parties, the parties are useless, that is what I think, people should come from no parties so that we have for women so that in the long run we have thirty women going to Parliament. Why? This is because culturally the women have been down trodden. They are the ones who are the backbones of the economy, they are the ones who are working hard, at the same time they do not have kuras, they are released to go and start another life afresh and that is afresh without anything and she has been contributing where she came from. Those women should be represented, they should be allowed to defend their life and to defend the lives of their daughters because even the situation that we are having right now, the girls are reading so hard and they should not just be left like that.

**Audience:** (Applause)

The ---? courts in the local council area should be allowed so that the old men in the village should be listening to cases, maybe such cases as fights and thefts in the village.

Kinuthia Mwaura: My names are Kinuthia Mwaura. I have a few contributions to make but before I do that, I wish to echo one statement that my predecessor has said about the ---? and whatever. I think allowing the ninety seats to be nominated by Parliamentary parties is a great fuss. Let them contest those seats, let people contest for those seats, let us not have anybody being nominated. Why nominate? Even in the Councils, let us not have nominated councilors. Let us have people contesting because we want the best from the best.

Now, I wish to refer to Chapter 4 on citizenship, Article 21, which says a person can have citizenship by only marrying a Kenyan for three years. I think it will allow that we are commercializing our citizenship. Let us qualify that with another quality and let us improve on the years, let it not be three years, let it go to seven years and if not seven, let it come to five.

On the Bill of Rights, chapter 5: I was reading this last week and I was beginning to note that we have not considered people with HIV-Aids as people requiring freedom from discrimination. So many of them have been sacked from their duties because contracting HIV and so I wish to point out that it is my wish and the wish of so many that we ---? a Bill or Rights.

I wish to come to the devolution of powers, Article 216.1 on village councils. As I was reading this, we are not given the mode

of this village. Wamesema kijiji and in some areas, one kijiji can be a sublocation in itself. So, let the draft go into details saying the extent of that and this one can be erased together with Article 77.1. There is a contradiction between 216.1 and 77.1 (c) It says about elections and when it comes to the village, they say the village can decide on which mode and here the Electoral Commission as well has been given the mandate to show the direction to follow in 77.1 (c). It is a guide on the election of the district and the village councils.

I would go to the Judiciary; we have had the position of Chief Justice, he sits in the Supreme Court. I think it is high time we have a ---? CJ to deal with matters of administration and to sit in the High Court because I think that point has been left out.

I will turn to section 267.1, Kenya Correctional Services and I am afraid I am talking about children born to women in custody.

Last week I was reading about the Judges, during Moi Day, who visited the Prisons to give out clothes etc. We seem to have a contradiction. We are told that there is the Bill of rights and that everybody has a right, even that child who is not born, like my predecessor was saying, but is in that stage of growing up from the embryo, from that small germ and here we are talking of children who are living with their parents in custody. Do they have the right? Are they enjoying this right? It is high time we addressed that issue lest one day a child will come from that place and sue the government for wrongful confinement.

**Audience:** (Applause)

**Kinuthia Mwaura:** There is the issue of the Auditor General; we have seen that he has the duties to audit all firms, financial dealings, from the political parties to every other --- and we have also seen that he also should be audited. But then there is this fear that his auditing ends at auditing? I think we need to tie his duties with the duties of the public prosecutor so that each person who has misappropriated funds is, through the Auditor General's report and the authority given to him, through the public prosecutor, he can be able to follow that issue.

The other area I was going to talk about and I wish Mr. Owade you explained, is in the eight schedule, article 7.1. Please explain because it shows as if this Constitution comes into effect, we do not need the public administration, hatutaki kutawaliwa and I would say there is no need of having it. Why do we have to have village councils and then still remain with the Chiefs, the DCs and the PCs.

Thank you so much.

**Erick Kipchumba:** Hamjambo nyote? Nitachukua nafasi hii kuwashukuru waakilishi wa Commission kwa kutupatia nafasi na kutusomea mapendekezo zetu. Nitakuwa na maoni fulani. Kwa hii draft tumeona ya kwamba kwa hii draft tumeona kuna mahali imeandikwa ya kwamba mtu akitoka nje kuja kuzalia mwanamke wa Kenya, mtoto ambaye atazaliwa atakuwa Mwanakenya. Iwapo tutakubalia uraia wa watoto kama hao, tutafanya Kenya iwe ni dumping ground ya watu kutoka nje. Iwapo wasomali wataingia Kenya na kuwazalia wanawake wa kenya na tuwapokee hao watoto hao, itakuwa ni dumping ground ya wageni kwa sababu Waingereza wakija watazaa watoto, Wasomali wakija wazae watoto, Waganda wakija, wazae

watoto na wawe citizens. In the near future Wakenya ---? Kwa hivyo sasa ingetakiwa hiyo ikatazwe kabisa.

Pili, ni mamlaka ya village council ama wazee wa kijiji huko. Tumeelezwa kwamba wazee wa kijiji wachaguliwe na wanakijiji wenyewe na hatujaelezwa ni miaka ngapi huyo mzee wa kijiji anastahili kuchaguliwa nayo na udogo wake iwe ni miake mingapi kwa sababu unaweza kukuta mtu wa miaka sabini au tisini akifanya kesi huko na ukiona vile masomo inakuja mtu anaweza kuiba bibi ya mtu na kufanya ukora.

Kwa sababu saa zimeenda sana, kuna mama moja hapa atatupatia report. Mama tuambie jina.

**Lydia Bett:** Mine is about the points, which have been put here in the draft. From what I have read here, the draft is silent about the President's marital status. I don't know but I would suggest that as a leader of a Country, the President should be a married person because he is going to deal with those people who are married and for a single man, he may not be successful because for every successful man, behind him is a principled woman.

Another thing is the age of the President; we have been given here as thirty-five but that person will be very young – hata nyinyi wazee, watoto wa siku hizi mlio nao nyumbani wa thirty-five year are very young. I suggest that the minimum age for a President should be forty-five years because someone of thirty-five years should be somebody who just completed his college or university and may not really know how to deal with the public. I think that age should be raised to 55 but the minimum being seventy is okay.

That is what I had for you.

**Mr. Owade:** Somebody talked about the national flag proposal and we have taken note of that. The age limit has been raised several times, recalling of Parliamentarians, the criteria of 30 percent leaves a lot of hanging issues and we have taken note of that.

The age limit of Judges to let them retire at sixty, the recommendations that Ministers and Deputies the number should be 20, we have taken note of that. Councillor Chemitai you raised something on the provincial administration and that is the only thing I have already said too much but I think the important thing that I have said is that there employer remains the Public Service Commission so we will leave at their discretion but let us not be deceived that the Constitution of Kenya Review Commission will be rendering leaders of the Provincial administration jobless and that is what I wanted to make clear. They are employees of the Public Service Commission.

On land, we already have got the Land Commission. I hope you understand that the fact that we have the devolved system means that we shall decentralize it so that the insecurity can be taken care of and this Commission is completely entrenched in the Constitution as an independent body.

Mrs. Magu you are against the seats being reserved for women, you feel they should compete like others. That is your view and we put it in record that way. Cost effectiveness of the larger House. That is also your view and we have taken note of that. You had taken note whether we could use the new Constitution for the coming elections. What I could say is that it depends on you the people of Kenya because you are the ones who have got the sovereignty so if it is your wish, so be it.

The fear of the dominance of the clans, this was also the fear in Bondo and other areas I traveled to but I think as I had mentioned, there is a special task force by the Constitution of Kenya Review Commission dealing with the nitty gritty of the devolution structure because as we were talking of let us say a Locational Council, village councils, we shall have representatives at the various levels so that all the views and needs are catered for but there was a fear that a clan might be dominating all the time. I think one thing that we have put into place is that let each village be represented. Let each of the smaller clans be represented at the village council and we are putting a criteria on the number of people we want to get. From village to location is the same, location to the district is the same but I see the fears you have; there is already a task force working to that and our main purpose here was just to give you a framework of how the structures of government will look like, you shall beef them up and that reminds me of the council.

I did mention something on the councils and were are still retaining the councillors. As you may realize, the locations have been merged throughout this Country so we are saying we also need two representatives as councillors but they must be directly elected by the people in that location.

I would not like to talk about devolution any more, I have given you the framework and I know you will start asking a lot of questions but wait we have another bigger volume on devolution but you know where it is leading to.

Somebody talked about these parties nominating people, and why we are involving political parties, that they are bored and tired of it, we have taken that into account. Somebody raised a very important issue on girl child education and we have taken note of that.

The village council taking the role of the tribunal courts is allowed in the Constitution because these are some of the duties they will have to do. Bwana Kinuthia Mwaura you are against the ninety by the political parties. Your idea on citizenship, three years is very short a period and we have taken notice of that. You are talking about the HIV/AIDS and discrimination and why it is not there in the Constitution. This we will leave for Parliament to set up various legislative structures to tackle that and all these other things but it will be clear and again we have taken that into consideration. Defining a kijiji, that one we leave for the council to decide but we would be happy if you gave us your recommendations on what exactly we need to do. As to the contradiction on the code of elections, the electoral Commission and the village council also deciding, we have taken note of that.

The Chief Justice requiring a ---(one) that is your opinion and we have to respect that. Correctional services in respect to women in custody; again as you look there, we have given just a framework and that is what the Constitution talks about on the rights of the child so that if anybody now does anything bad to the child; abuse or neglect or whatever, you as a citizen or anybody who is aware of that, you now know what the Constitution says about the rights of the child because the Constitution cannot again write everything. Somebody talked on accepting street children and therefore as a dumping ground for the people of Kenya and that is a very strong point and we have taken note of that.

What age limit for the village council; when we talk of the village council we are not just talking of wazee, in fact we will even work out some kind of basic qualifications for some particular jobs but wazees also using the current Presidents term, wazee pia watakuwa ndani so it is not only vijana; it has to be equal.

Chepkoech Sally you raised something about the Kadhis Courts court and you feared that they are being treated as special citizens of this Country. I don't want to comment on that, I respect your views. On your fears on national holidays, I would like to assure you that Christmas and Easter, labour day, all those will remain as public holidays but we just have those three for the national days. The other thing of considering the street children; that one again under the Constitution we cannot go to the details and Parliament now has a duty to do that and we also echo your statement. You have also opposed strongly here in Eldama Ravine that women should be elected and should not be nominated and we have taken you on record for that.

Lydia Bett, on marital status, we have taken that into account and then the age limit of the President being at least 45 or 50 years and we have also taken note of that. Thank you.

**Evanson Bomet:** Jina langu ni Evans Bomet na ningetaka kuchangia zaidi kwa side ya Bill of rights. Nimesoma hapa Bill of rights na inasema ya kuwa...it is talking about inheritance na when we talk about inheritance there are no specific rules put down. When you talk about women, is it those who are married or... Ningetaka kusema hapo wakisema inheritance, lazima kuwe na procedures. Tukisema mama arithi mali, yule ameoleka anaweza kurudi kuangalia mali ya kwao. Tungesema kama ni mali ni mali ya kule ameolewa ama ni mali ya nyumbani kwao.

Kile ningesema tena hapa ni mambo ya administration. Tuliambiwa kuwa before independence, administration walikuwa wana-elect na mimi ninasema kama wata prefer mambo ya administration, sisi wenyewe, yaani raia wenyewe wa elect.

La mwisho nikimalizia ni mambo ya gender; ninasema kuwa mimi ninaona hii Katiba ni nzuri sana and I am for it na jambo ningesema tu kwa wanawake ni ya kuwa wasikuwe nominated lakini wawe elected.

**Richard Chelimo:** Langu Bwana Chairman ni moja. My name is Richard Chelimo. Ya kwanza ni kuunga mkono hii devolution lakini in my mind it would have been the sublocation, then the location then the district, then the district, the the

regional council and then the national council and the national assembly, tukiwa na representative anayeenda mpaka hapo.

Number ya pili ninauliza ya kwamba CKRC ilitumia criteria gani kueleza delegates? Kwa sababu hakuna haja kufika tarehe ya mwisho tunaambiwa yale yatakufaulu kwa sababu kuna competition. We need strong people who will defend the district.

Ya tatu, kama Mzee mmoja alivyosema hapa, katika Katiba, hatutaki mwanamke kuweko katika kijiji ama awe mwanamume bila kuo. Hii inamaanisha kwamba tutakuwa tukishikamana. Jamii ya zamani waliweza kutawala kwa sababu kila jamii...lakini leo tuko na watoto, mara ni wako, mara ni wa yule, mtoto anakuja nyumbani na watoto kumi, baba yake ako wapi? Tungetaka ile Katiba izungumzie kwamba yeyote akizaa mtoto, apeleke kwa baba yake ili tusiwe na watoto wasio na baba kwa sababu katika African tradition, watoto wote ni wa baba.

Kwa Islam, kuna mtu alilalamika, bibi akiolewa na Mwislamu hapa, si anaitwa Zainabu? Alikuwa Maria jana na leo ni Zainabu.

Tukioa kutoka kwa wajaluo alikuwa Nyako na akija hapa anakuwa Chepyoset so women change but men remain the same so there should be no confusion. Tunajua bwana ni mwenye mji; bibi anakuja kuzaa watoto na akikubali anakaa. Hii mambo ya kuwa bibi asiye na bwana inaleta watoto wasio na baba.

Hawa watu walio nominated are too many. Nomination iweko kwa sababu ya kazi fulani; kama wewe ni daktari, uje kwa Parliament ama uje kwa Council ili uwasaidie watu. Hii youth wing, hii mambo ya maendeleo imefanya tuwe na watu wengi wasioendesha kazi kwa hivyo nomination iwe kidogo kulingana na nguvu.

Ya mwisho kabisa, ningependa hao delegates six hundred and fifty wapitishie Katiba hii itumike leo, leo kwa sababu ikichelewa haitakuwa na maana.

**Audience:** (Applause)

**Pamela Murgong':** I have two three points to make. One, I support very highly the issue of women in Parliament ili hata sisi tupate nafasi ya kupigana na wanaume katika siasa kwa hivyo I do support lakini si nomination, tutaenda ya ku-elect.

**Audience:** (Applause)

**Pamela Murgor:** The second issue is on 233.3-ambayo inaongea juu ya non-citizens of Kenya to lease shamba for ninety years. Surely ninety years hiyo ni a lifetime na utakuwa umempa shamba muda wake wote wa maisha yake. In ninety years, ni watu wangapi wangukuwa wametumia hiyo shamba? Wangukuwa watu wengi sana wa Kenya. Kwa hivyo let it be reduced to may be 20 or 15 ili Wakenya pia waweze kutumia hiyo shamba.

Another thing ambayo ni ya mwisho sana, I am a volunteer ambaye ninazungumzia juu ya AIDS awareness. Katika kazi yetu

tumeanza kupata watoto ambao wameachwa na wazazi wao kwa sababu ya AIDS na hawa watoto hawapati the right to education, to health hata chakula. Ninaomba serikali ichukue hatua na iweze kuwachukua hawa watoto waweze kusaidiwa kusoma na kuishi vizuri kama Wanakenya wote ambao wanaishi. Wana pochukua hatua kuwasaidia wale mapipa, wasiwasahau wale kwa sababu wamekuwa mayatima kwa sababu ya jambo fulani na si kwa kupenda kwao na sasa hivi wanaachwa manyumbani where relatives cannot maintain them because of the standard of living in Kenya sasa; we are very poor, we cannot maintain more than five in our family kwa hivyo at least the Commission iangalie vile watafanya kwa hao watoto.

Asanteni.

**Audience:** (Applause)

**Paul Tuikong:** Please record your name and I think the Constitution says that we respect age and therefore I respect the age of that old man. Can you come and give your views?

**David Tonui:** Thank you very much, asante sana kwa kunipa heshima. Jina ni David Tonui. Watoto wasitunyang'anye mali yote, watubakishie ingine. Kwa hivyo Constitution mpya ifanye kazi.

**Audience:** (Applause)

**David Tonui:** Kitu kilichoko sasa ni kuheshimiana. Niliona mtoto mmoja msichana hapo amekasirika zaidi kwa hivyo msikarike kama mnataka kuwa viongozi. Msitoe machozi mbele ya watu, sisi tunataka mapenzi. Nyinyi kina mama na wasichana wetu

---(not clear) mbele ya wazee wapoe, wakiwa na rika yao sawa.

Kitu ingine bwana mwenyekiti, mimi nilipoenda retire, nilienda research ya Tugen (talking in Kitugen) so that when you go to engagement you are simply going through (talking in Kitugen) so watu waheshimiane. ----(not clear) Thank you very much.

**Audience:** (Applause)

**Sambu:** Thank you very much. I am Sambu and I will take less than one minute. Jambo lililoko, this Katiba haisemi chochote kuhusu clashes na ningependa tuweke kipengele fulani; a clause which may run this may “ it is unConstitutional for a Kenyan to hit another Kenyan without reasonable cause” Hii iwe clause ya article 33, clause number 3.

Ya pili, nimeona hii Constitution iko biased against the President ambaye amepewa two terms na Prime Minister until he dies. Hii si mzuri, all elective offices should carry a term of two years.

Number three, dual citizenship should not be allowed in Kenya. Yangu ni hayo, asante sana.

**Mr. Owade:** Ninataka kumaliza hivi; Evans Bomet, that the Constitution is not very specific on women, not specific concerning inheritance, we leave that one for Parliament to define. Provincial administration, let us elect directly and that is in regard to women, that is your view and so we will respect.

Richard Chelimo, that the structures of location should be in place, you have recommended the village, locational district council upto the national council. If you feel we should streamline in the sublocation, that is your view and we respect it and it shall be mentioned in the conference. The concern about delegates; that one I leave for the coordinator to handle. Ninety nominated are too many, I get your concern.

Pamela Murgong, it is your position that woman should be directly elected. On your issue of ownership of land, unaona kama hiyo miaka tisini ni mingi sana; what we had in mind, may be if I could clarify, perhaps an investor might come here who wants to lease in order to may be construct a factory or a farm or a company so you may not harass the investor. We may lease it out but he may not stay up to all that period but perhaps that factory can help us for years and years but if you feel 20 to 15 is enough, that is your view and we respect that. HIV/AIDS orphans for the state to care, under the rights of the child, you will read that and it is there.

David Tonui you talked of respect of the old in regard to property, there should be love and there should be recognition and that women should also respect men and there was even the age category in the Kalenjin tradition. I think that one is very important and it will be taken into account and we have taken note of that.

On ethnic clashes, on your view Mr. Sambu, we have also taken note of that. Constitution bias against the President, dual citizenship should not be allowed; I should state here that our brothers from the Turkana, the Pokot, the Rendile, the Somali, all those people really pressurized for that because they live across both the two countries. Perhaps what Parliament may do is just to lay some strict method to control under what aspect and under what principles. So that one we leave for Parliament but I think it is also important to recognize our brothers who are living across the borders.

As I finish, on the same issue of ethnic clashes, there is a page, that is page 47, that is on Human Rights abuses; We are saying there is a Commission on Human Rights and Administrative Justice. This Commission is there to create peace, reconciliation and love so that any hatred which may have occurred in the current Constitution is done away with so that as we begin the Constitution, all Kenyans live in a brotherly and in a lovely atmosphere. Are we together?

**Audience:** Yes.

**Paul Tuikong:** There is one, which I would want to answer, with your permission Mr. Owade, and this one is on the election of the district representatives to the National Constitutional Conference. I want to say here very clearly that it was in the papers and most of you I know they know that the election of the three delegates to Nairobi was done by polling, that is the councillors of the County Council so that forty four councillors of the county council met here on the 17<sup>th</sup> of September and they elected the three delegates. We as the Commission we made the ground very level and every one had the right to present his name for nomination. CKRC headquarters put it in the papers and I also did my part and circulated across the district and may be it is unfortunate for those who never heard but then it has been done and it was very fair and it was also reported well and I am sure that the three delegates are here and I have not heard any complain but they have duly elected and their names have been gazzetted. Thank you.

**Mr. Owade:** I am just requesting one of you to make a clear position on the one third reservation for women. I just want you to make it very clear for the sake of my notes. Are you saying you support that seats be reserved for them but then they should be elected directly or are you saying they should not be reserved directly?

**Audience:** Reserve.

**Mr. Owade:** Reserve, so we should retain the one third.

**Audience:** Yes.

**Mr. Owade:** Okay. Therefore, they should be reserved but they should be voted in directly and not nominated.

**Audience:** Yes.

**Mr. Owade:** I get the point now.

**Paul Tuikong:** Thank you very much all of you for today's attendance. We have now closed and it is now fifty-five minutes to five and I want to sincerely thank all of you for having attended this session and I wish you a safe journey back home.

May I call upon Reverend Rotich to come and close with a word of prayer?

**Rev. Rotich:** Tusimame tuombe tafadhali. Na tuombe.

